TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~374.~~

JOHN A. C. HORN, APPELLANT,

vs.

WILLIAM LOCKHART, SARAH A. LOCKHART, AND NARCISSA P. LOCKHART.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED NOVEMBER 10, 1871.

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INDEX.

	Original.	Print.
Bill of complaint	1	1
Subpœnas	41	13
Demurrer of John A. C. Horn	46	15
Alias subpœna	49	16
Answer of William McPhail and Mary McPhail	50	16
Agreement as to taking testimony	52	17
Order of court overruling demurrer	53	18
Separate answer of John A. C. Horn	54	18
Decree pro confesso	216	84
Affidavit of S. J. Cumming	218	85
Decree pro confesso	219	85
Showing for continuance	220	86
Order continuing cause	226	88
Affidavit for continuance	227	89
Agreement of counsel as to taking depositions	232	90
Affidavit for continuance	233	91
Continuance	238	92
Order to publish testimony	238	93
Motion to dismiss for want of jurisdiction	239	93
Motion submitted to the court	240	93
Motion to suppress depositions	240	94
Order of court	244	95
Commission to examine W. B. Modawell	245	95
Interrogatories to W. B. Modawell	246	96
Cross-interrogatories to W. B. Modawell	251	98
W. B. Modawell's deposition	259	100
Certificate of commissioner	272	105
Exhibit A to deposition	273	105

	Original.	Print.
Commission to examine William E. Clarke	275	106
Interrogatories to William E. Clarke	277	107
Cross-interrogatories to William E. Clarke	279	108
Deposition of William E. Clarke	280	108
Certificate of commissioner	284	109
Commission to examine John A. C. Horn	285	110
Interrogatories to W. B. Modawell	246	96
Interrogatories to John A. C. Horn	286	110
Cross-interrogatories to John A. C. Horn	295	113
Deposition of John A. C. Horn	302	116
Certificate of commissioner	325	123
Exhibit A to John A. C. Horn's deposition	326	124
Commission to examine L. L. Bryan	328	125
Interrogatories to L. L. Bryan	329	125
Cross-interrogatories to L. L. Bryan	334	127
Deposition of L. L. Bryan	339	129
Notice to John T. Morgan, complainant's solicitor	351	132
Certificate of commissioner	352	133
Opinion of Judge Bradley	354	133
Final decree and appeal	372	139
Appeal bond	375	141
Clerk's certificate	379	142
Assignment of errors	480	142

1 *Bill.*

Circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

WILLIAM LOCKHART AND SARAH LOCKHART, his wife, and Narcissa Lockhart,
vs.
JOHN A. C. HORN, EXECUTOR, ET ALS. } In chancery.

To the judges of the circuit court of the United States for the southern district of Alabama, at Mobile:

William Lockhart and Sarah Lockhart, his wife, and Narcissa Lockhart, all of whom are over the age of twenty-one years, and citizens of the State of Texas, bring this their bill against John A. C. Horn, a citizen of Alabama, who resides in Wilcox County; and Leonidas L. Bryan and Frances L. Bryan, his wife, who are citizens of Alabama, and reside in Wilcox County; and Belton O. Nabors and Elizabeth P. Nabors, who are citizens of Shelby County; and John D. Alex-
2 ander, and against the said John D. Alexander, as the administrator of Joseph M. Alexander, and against S. S. King, as the administrator of N. B. Lessuer, all of whom are of lawful age, and citizens of Alabama, residing in Marengo County; and William McPhail and Mary McPhail, his wife, who are over twenty-one years of age, and reside in Novarro County, Texas, and the said John D. Alexander, as the administrator of Rebecca Horn, and thereupon your orators complain and say—

Section 1. That John Horn died in the county of Marengo, in the State of Alabama, in March, 1858; he being, at the time of his death, a resident of said county and State.

Section 2. Said John Horn left surviving him, his widow, Rebecca Horn, and his children, as follows: John A. C. Horn, who is twenty-one years of age, and resides in Wilcox County, Alabama; Sarah Lockhart, wife of William Lockhart, who are over twenty-one years of age, and reside in Novarro County, Texas; Narcissa Lockhart, then the
3 wife of Charles Lockhart, who has since died, on the 12th February, 1864, leaving the said Narcissa his widow; Mary McPhail, wife of William McPhail, who are over the age of twenty-one years, and reside in the county of Novarro, Texas; Frances L. Bryan, wife of Leonidas L. Bryan, who resides in Wilcox County, Alabama, and are over the age of twenty-one years; and Elizabeth P. Nabors, wife of Belton O'Nabors, who are over the age of twenty-one years, and reside in Shelby County, Alabama.

Section 3. That, on the 8th April, 1858, special administration was granted to John A. C. Horn, by the probate court of Marengo County, Alabama, on the estate of John Horn, to collect and keep the said estate, and he gave bond, as such administrator "ad colligendum," in the sum of one hundred thousand dollars, with Joseph M. Alexander and H. B. Lessuer as his sureties thereon. On the 5th July, 1858, said John A. C. Horn, filed his petition in said court, accompanied with a paper purporting to be a substantial copy of a will of John Horn, and asking for the probate thereof as such last will and testament and in lieu of the original, of which it purported to be a copy, and he
4 alleged, that said original will had been lost or destroyed, and had never been revoked by said John Horn. At the September term, 1858, of said court, a jury was called, and on issue of "devisavit vel

non," joined by some of the legatees and heirs-at-law of John Horn, said papers, so propounded, was declared to be a true copy, in substance, of the will of John Horn, deceased, " and was, by the court, admitted to probate as the last will and testament of John Horn, deceased, until the original bill or a more authentic copy can be brought in." A copy of said will, and of the orders and decrees of said probate court, touching the probate thereof, are attached to this bill, and marked Exhibit " A," and are referred to for greater certainty.

Section 4. Orator and oratrix, Sarah Lockhart and William Lockhart, and Narcissa Lockhart, were not present at said trial in person or by attorney, and they did not participate in any way in the contract respecting said will so propounded; and, under the statutes of the State of Alabama, they were not effected in any way by said
5 proceedings so as to be now precluded from their right to controvert said will or the probate thereof; and orator further states that, by the laws of Alabama, the time that elapsed since the 11th day of January, 1861, to the 21st of September, 1865, is deducted from the time to be computed under the several statutes of limitations in said States as a bar to any right of action, so that nothing in the action of said probate court which admitted said will to probate, debars or prevents orator from controverting the same.

Section 5. After said will was so admitted to probate, on the 22d November, 1858, said John A. C. Horn was qualified as executor thereof, and entered into bond in the penal sum of one hundred thousand dollars, with John D. Alexander and N. B. Lessuer as his sureties thereon, conditioned for the faithful performance of the duties required of said John A. C. Horn, as the executor of the last will of said John Horn.

Section 6th. Orator further states that, if said John Horn ever made a will, such as that set forth in Exhibit "A" to this bill, or any
6 other will, the same was not in existence when he died, but before that time the same had been destroyed by said John Horn with the intent to revoke the same, and, with the intent on his part to leave no will, but to die intestate; and that, in fact, he did die intestate, and that the said paper so admitted to probate, was not, in fact, the will of said John Horn.

Section 7. Orator further states that said John Horn took into his possession all the property real and personal of said estate of John Horn, and proceeded to collect moneis due said estate, and to sell the perishable property of said estate; and he also sold two hundred and forty acres of land described in said paper admitted to probate as the will of John Horn; and from these several sources he derived thirty thousand dollars, for which, with the interest thereon, he is liable to account with the persons who are the heirs of said John Horn, or if said will is established, with said persons, as legatees and devisees under said will. Said John A. C. Horn also is liable to account with said
7 persons for the value of the hire of the slaves belonging to the estate of John Horn, from the time of his death to such time as the same was delivered to said persons, and that the value of such hires is twenty thousand dollars with interest thereon. And the said John A. C. Horn is liable to said persons for the value of the rent of seven hundred and twenty acres of land mentioned in said will, except the dower of Mrs. Rebecca Horn, allotted to her therein as hereinafter stated, from the time of the death of said John Horn, and the value of the rent thereof, is fifteen thousand dollars with interest thereon. After said paper was so admitted to probate Mrs. Rebecca Horn, the

widow of John Horn, filed in said probate court of Marengo County, her written dissent thereto; and afterwards, in 1859, dower was assigned to her of one-third part of seven hundred and twenty acres of land which she took into her possession and continued to hold until her death in October, 1865.

Section 8. In November, 1865, John D. Alexander, who resides in Marengo County, Alabama, was appointed by the probate court
8 of said county the administrator of Rebecca Horn, and gave bond, and took upon himself the execution of the duties of said office.

Section 9. In May, 1860, said John A. C. Horn, as the executor of John Horn, proceeded to make a partial settlement of his accounts, as such executor, in the probate court of Marengo County. Orator and oratrix were not present at said settlement, and were not, in fact, represented at the same, and had no actual or legal notice thereof. And in May, 1864, said John A. C. Horn proceeded, in said probate court, to make a pretended final settlement of such estate, and filed his resignation as executor; but it does not appear, from the proceedings in said court, that his resignation was accepted, nor that he was discharged from his said trust, or released from his duties and obligations imposed by law upon him. It does not appear, from said settlement, that said John A. C. Horn had never fully complied with his duties and obligations as executor, in this: that he had not paid to those persons
9 entitled to the moneys in his hands the sums decreed to them respectively by said court; that he had not turned over to Frances L. Bryan the slaves bequeathed to her in said will. That he had not paid, either to said Frances L. Bryan, or to Elizabeth P. Nabors, the sums of money respectively decreed to them by said court; and it further appears that the several sums of money decreed on said supposed final settlement to each of the heirs and supposed legatees of said estate, and to Mrs. Rebecca Horn, were decreed to paid to them in bonds of the Confederate States, and no such bonds were ever paid to, or received by, any of them under such decrees. Orators further states that there was no law, either valid or pretended, which authorized said court to render a decree payable in the bonds of the Confederate States, and said decrees are wholly void. At the time said decree was rendered, war was then flagrant between the United States and the States in rebellion, and large armies were in the occupancy of the country be-
10 tween Alabama and Texas. The only notice that was pretended to be given of said settlement was by publication in some newspaper published in Marengo County, and which never reached orators, nor any others of those interested in said estate of John Horn, who were residing in Texas. It was then impossible for orators to reach Marengo County, Alabama, because of the presence of hostile armies along the Mississippi River and & other places, which formed a complete barrier against all communication between the people of Texas and Alabama. Orators were not present at said pretended final settlement, and had no agent or attorney present at said settlement, and they did not, in any manner participate in said settlement. Orators charge that they have the same right to call said John A. C. Horn to a full and final account and settlement of his dealings and transactions with the estate and property of John Horn, deceased, as if said pretended settlement had never been made. Orators attach to this bill, as Exhibits B and C, copies of said decrees rendered on partial settlements made in
11 May, 1860, and on said pretended final settlement in 1864.

Section 10th. Orators further state that, about the year 1864, the said N. B. Lessuer and Joseph M. Alexander departed this life in

Marengo County, Alabama, and S. S. King was duly appointed and qualified as the administrator of said Lessuer, and John D. Alexander was duly appointed and qualified administrator of Joseph M. Alexander. Orators charge that said John D. Alexander, and the estate of said Joseph M. Alexander and N. B. Lessuer, in the hands of their respective administrators, are liable for the defaults of said John A. C. Horn in the management and settlement of said estate of John Horn, upon the respective bonds aforesaid.

Section 11. Orators further shew unto your honor that all the moneys received by John A. C. Horn from the property and assetts of the estate of John Horn, was received in sound funds, the equivalent of specie; yet said Horn, in his pretended final settlement of said estate, claimed and was allowed a credit for all the residue found in his hands,
12 because he alleged that he had invested the same in what were called four per cent. bonds of the Confederate States. Orators charge that if said funds were so invested by said John A. C. Horn, that such investment was made without authority of law, and was a conversion by him of said moneys, for which he is liable, with interest thereon.

Section 12. Orators further state that said John A. C. Horn is now in possession of the tract of seven hundred and twenty acres of land mentioned in said supposed will of John Horn, as being devised to Rebecca Horn for her life, and after her death to John A. C. Horn, and he claims it as his own under said will. Orators charge that, if said will should be sustained and established as the last will of John Horn, still that John A. C. Horn was not entitled to the possession and enjoyment of said lands until after the death of said Rebecca Horn, and that he received and enjoyed the rents of said land during all the time since the death of John Horn, up to the present time; and said lands during all that time were worth an annual rental of three thousand six
13 hundred dollars. But orators charge that they, in common with the other heirs of said John Horn, are entitled to said lands in absolute right.

In consideration of the premises orators pray that said pretended will of John Horn be set aside, and that his estate be settled and distributed without reference thereto, and that said John A. C. Horn be held to full and just account for all property and money, rents, and accumulations of said estate with those persons entitled to distribution and inheritance the eof. Or if said will is not set aside, that said John A. C. Horn, as the executor thereof, be held to account with orators and the other legatees and devisees under the same, for his execution thereof, and that to these ends it be referred to the clerk of this honorable court, as master in chancery, to take and state said account according to law under the direction of this honorable court; and that a decree be also rendered against the said John D. Alexander as the administrator of Joseph M. Alexander,
14 deceased, and against S. S. King, as the administrator of N. B. Lessuer, upon the bond of John A. C. Horn given as executor of the last will of John Horn for whatever sum the said John A. C. Horn shall be found to be in arrears with the estate of John Horn on his accounting as aforesaid.

Orators pray that your honorable court sitting as a court of chancery will take full and entire jurisdiction of the settlement of said estate of John Horn and proceed to distribute the same to all the persons entitled thereto under the law as the same may be determined by this honorable court. And that all accounts and equity subsisting between said John A. C. Horn and the other persons entitled to said estate growing out of

his administration of the same be fully and finally adjusted and settled. And orators pray that your honor will grant unto your orators all such other and further and general relief in the premises as in equity and good conscience they are entitled.

To the end, therefore, that the said John A. C. Horn, and the said S. S. King, as the administrator of N. B. Lessuer, and John D. Alexander, as the administrator of Joseph M. Alexander, and the said John
15 D. Alexander, in his individual capacity and as the administrator of Rebecca Horn, and Frances L. Bryan, and Leonidas L. Bryan, Belton O. Nabors, and Elizabeth P. Nabors, William McPhail, and Mary R McPhail be made parties defendants to this bill, and show cause, if any they have, why the relief herein prayed against them should not be granted and that they answer this bill.

Orators pray process of subpœna to issue to each of said defendants and that the said William McPhail, and Mary McPhail be made parties defendants to this bill, if they come within the jurisdiction of this court under the rules of practice in such cases. And they will ever pray, &c.

JOHN T. MORGAN,
Soloc't'r for Compl't.
BOYLES AND OVERALL,
Sol'ts for Compl'ts.

16 EXHIBIT A.

ESTATE OF JOHN HORN. } April 5th, 1858.

This day came John A. C. Horn and applied for letters of administration ad collegdendum upon the estate of John Horn, dec'd. It appearing to the court that said John Horn died on or about day of , 1858, at his place of residence in Marengo County, and it further appearing that there is reason to believe that said John Horn left a will at the time of his death which has not yet been discovered, and the said John A. C. Horn having entered into bond in the sum of one hundred thousand dollars, with Joseph M. Alexander and N. B. Lesuer as his sureties, and qualified as such temporary administrator, it is therefore ordered by the court that said bond be approved and recorded, and that said John A. C. Horn be, and is hereby, appointed special administrator to collect and take care of the goods estate of said deceased, and letters are issued accordingly; and it is further ordered that F. W. Griffith, John P. Coleman, D. C. Alexander, and W. L. Davidson be appointed appraisers of said estate.

17 ESTATE OF JOHN HORN, DEC'D. } April term, 1858.

On the application of John A. C. Horn, administrator, it is ordered that he be authorized to sell the crop of cotton on hand at private sale, for cash.

ESTATE OF JOHN HORN, DEC'D. } April 30th, 1858.

This day came John A. C. Horn, administrator ad colligendum of said estate, and filed in court an apprais'ment and inventory of said

estate, and also an inventory of the notes and claims in favor of said estate, which are by the court ordered to be filed and recorded.

ESTATE OF JOHN HORN, DEC'D. } May 26th, 1858.

This day came John A. C. Horn, and filed an additional inventory of said estate, which is ordered to be filed and recorded.

ESTATE OF JOHN HORN, DEC'D. } June term, 1858.

This day came Rebecca Horn, and filed her dissent in writing to the will *of* which, it is alleged, is about to be propounded for probate
18 as the last will and testament of said husband, the said John Horn, dec'd. It is, therefore, ordered by the court that said dissent be filed and received.

ESTATE OF JOHN HORN, DEC'D. } July 5th, 1858.

This day came John A. C. Horn, and filed his petition in writing and under oath, and avers in said petition that said John Horn, dec'd, a resident of Marengo County, died about the 11th day of March, A. D. 1858, having, before that time, executed his last will and testament, attested by William B. Modawell and Dewitt C. Alexander, a copy in substance, as he avers, of which will is annexed to and made part of said petition. He further avers in said petition that he is nominated in said will as the executor of said testator; and that since the death of said testator the said last will and testament has been lost, mislaid, or destroyed, so that said petitioner has not been able to find it, and is unable to produce the original thereof for probate; and the said petitioner propounds the copy aforesaid for probate as the last will and testa-
19 ment of said John Horn. And it appearing to the satisfaction of the court that Narcissa M. Lockhart, wife of Charles J. C. Lockhart; Sarah C. Lockhart, wife of William Lockhart; Mary R. McPhail, wife of William McPhail, heirs-at-law of said John Horn, dec'd, and are non-residents of the State of Alabama, and residents of the State of Texas: It is, therefore, ordered by the court that the petition and probate of said will be set for hearing at the stated term of this court to be holden on the second Monday and 13th day of September next. And it is further ordered by the court that notice of the time and place of hearing said petition be given by publication, for 3 successive weeks, in the Linden Jeffersonian newspaper, published at Linden, in the county of Marengo, for the non-resident heirs-at-law of said John Horn, deceased, to appear and contest said probate if they thought proper. The probate of said will was by the court heard, and, at the hearing thereof, the motion was made by the propoundents to suppress the deposition of Mrs. Rebecca Horn, the widow of the testator, taken by and in behalf of the contestants, which motion, after argument of the
20 counsel, was by the court sustained, and said deposition suppressed. And thereupon came a jury of good and lawful men, viz: Z. O. Riddle, and eleven others, who, being chosen true and sworn well and truly to try the issues made up under the direction of the court and joined by the parties, upon their oaths say that they find the issues in favor of the propoundents; they find that the said John Horn, deceased,

duly made and published a will in his lifetime; and that the following is a substantial copy thereof, to wit:

I, John Horn, of the county of Marengo, and State of Alabama, being of sound mind and disposing memory, and knowing the uncertainty of life, and certainty of death, do make and publish the following as my last will and testament, to wit:

I give and bequeath to my beloved wife, Rebecca Horn, all my property, both real and personal, of whatsoever description, that I may be seized and possessed of at the time of my death, to have and to hold the same during her natural life.

21 I give and bequeath to my son, John A. C. Horn, my home tract of land, containing 720 acres, more or less, together with all the improvements thereon, to have the same absolutely at the death of his mother.

I give and bequeath to my daughter, Frances S. Bryan, my negro girl named Alla, to have and to hold the same to her seperate use at the death of her mother.

I give and bequeath to my daughters, Narcissa M. Lockhart, Sarah A. Lockhart, E. P. Dumas, Mary R. McPhail, and Frances L. Bryan, the following land, which is detached from my home place, containing 240 acres, more or less, to be sold by my executor, on such terms as he may think best, and the proceeds divided equally among my said daughters.

At the death of my beloved wife I will and bequeath all the balance of my property to all my childrhn, to wit: John A. C. Horn, Sarah A. Lockhart, Narcissa M. Lockhart, Mary R. McPhail, E. P. Dumas, and Frances L. Bryan, to be divided equally between them.

If my daughter, E. P. Dumas, should die and leave no child,
22 or children surviving her, it is my will that her portion of my property shall go back to her brother and sisters, and her present or future husband shall have no part of it.

It is my will that, in the final distribution of my estate, *that* the advances which I have heretofore made to my children shall be charged up to them in said distribution, and I hereby charge to my children as advances heretofore made the following sums, to wit: J. A. C. Horn, $1,650.00; Narcissa M. Lockhart, $3,400.00; Sarah A. Lockhart, $4,400.00; Mary R. McPhail, $6,300.00; Frances L. Bryan, $8,250.00; E. P. Dumas, $8,617.00.

I hereby appoint my son, John A. C. Horn, executor to this my last will & testament.

(Signed) JOHN HORN.

Witnesses:
W. B. MODAWELL.
D. C. ALEXANDER.

They further find that said will has disappeared, and been lost or destroyed without the knowledge or consent of the testator, and that it has never been revoked by him; that he was of sound and disposing
23 mind, and that the said will is, in truth, the last will and testament of the said John Horn. It is, therefore, considered and ordered by the court that the said will, as above set out and so formed as aforesaid, by the jury be established and recorded as the last will and testament of said John Horn, deceased, until the original will or a more authentic copy can be brought in, and it is further ordered that letters testamentary be granted to John A. C. Horn upon said will.

ESTATE OF JOHN HORN, DEC'D. } September term, 1858.

On application of John A. C. Horn, administrator ad colligendum, it is ordered that he be authorized to sell the crop of cotton and wheat on hand at private sale, for cash.

ESTATE OF JOHN HORN, DEC'D. } October 28th, 1858.

This day came Rebecca Horn, widow of John Horn, dec'd, filed in court her dissent to the will of said John Horn, heretofore admitted to probate in this court, which dissent, in writing, is ordered to be filed & recorded.

24 JOHN A. C. HORN, Rebecca P. Dumas, et als. } October term, 1858.

I, James A. Young, judge of probate, of Marengo County, certify that the defendants in this cause in the matter of the probate of the will of John Horn, deceased, have this day, by their attorney, Robert D. Hart, esq., appealed from the judgement of this court admitting said will to record, and that the said Robert D. Hart has become their security for the costs of said appeal.

Given under my hand the 11th day of November, A. D. 1858.

(Signed) J. A. YOUNG, *Judge.*

ESTATE OF JOHN HORN, DEC'D. } November 4th, 1858.

This day came Rebecca Horn, widow of John Horn, dec'd, and filed in court her petition for dower in the real estate of which said John Horn died seized. It is, therefore, ordered by the court, that said petition be set for hearing on the 1st Monday in December next, and that notice therefor be given by publication for three successive weeks in the Linden Jeffersonian newspaper, that the non-resident heirs-at-
25 law named in said petition may appear and contest, if they think proper, and that citations issue to the heirs residing in the State of Alabama.

ESTATE OF JOHN HORN, DEC'D. } November term, 1858.

This day came John A. C. Horn, executor, filed his petition for an order to sell the perishable property of said estate, and, it appearing that a sale of said perishable property is necessary to make a division among the legatees according to the provisions of the will of said testator, it is ordered and decreed that said petition be granted, and that said executor be authorized to sell said property at auction on the premises, on 12 months' credit, after advertising as the law directs.

ESTATE OF JOHN HORN, DEC'D. } 22d Nov'r, 1858.

This day came John A. C. Horn, and entered into bond in one hundred thousand dollars, with N. B. Lessuer and John D. Alexander,

26 as his sureties, and qualified as executor of the last will of said John Horn, deceased. It is, therefore, ordered by the court, that said bond be approved and recorded, and that letters testamentary on said last will issue to said John A. C. Horn accordingly.

ESTATE OF JOHN HORN, DEC'D. } 22d November, 1858.

This day came Rob't D. Hart, att'y for the contestants, in the matter of the probate of the will of the said John Horn, deceased, and withdraws his written obligation as security for the costs of appeal in this cause, and dismisses said appeal. It is, therefore, considered by the court that said appeal be dismissed.

27 EXHIBIT "B."

Probate court Marengo County.

ESTATE OF JOHN HORN, DEC'D. } May term, 1860.

This day came John A. C. Horn, executor of the will of said deceased, by attorney, and likewise came Charles J. C. Lockhart and Narcissa, his wife, William Lockhart and Sarah, his wife, William P. McPhail and Mary R., his wife, and Frances L. Bryan, by several attorneys, and the accounts and vouchers of said executor for partial settlement, with the exception thereto, being by the court audited, and said account being by the court restated, it appears to the satisfaction of the court that notice of the time and place of said settlement has been given by publication for three successive weeks in the Linden Jeffersonian, and that said cause has been regularly continued to the present term of this court. It further appears that, after charging said executor with all wherewith he is properly chargeable, and allowing him all just consideration, there remains, subject to distribution, the sum of ten thousand seven hundred and eighty-three $\frac{50}{100}$ dollars, divided from the real estate of said
28 testator, and by him divided in his last will, & to be equally distributed among the said Narcissa Lockhart, Sarah Lockhart, Mary R. McPhail, Frances L. Bryan, and Elizabeth P. Dumas, the respective share of each being two thousand one hundred and fifty-six $\frac{70}{100}$ dollars. It further appears that there remains on the general account with the personal estate of said testator a balance of $5,159.11, to which Mrs. Rebecca Horn, widow of said testator, and who has dissented from the will, is entitled to one-fifth, to wit, 1,159.52, leaving to be distributed among the legatees $4,636.59. It further appears that, after certain specified legacies, including the real estate hereinbefore specified, be charges against the said legatees the following advancements made by him in his lifetime, to wit: To Mrs. Narcissa Lockhart, the sum of $3,400.50; to Mrs. Sarah Lockhart, the sum of $4,400.50; to Mrs. Mary R. McPhail, the sum of $6,300.50; to Mrs. Frances L. Bryan, the sum of $8,250.50; to Mrs. Elizabeth P. Dumas, the sum of $8,617.50; to John A. C. Horn, the sum of $1,650.50, making,
29 in the aggregate, the sum of $32,617.50 advanced by him, and directs all the remainder of his property to be equally divided among the said legatees above named, taking into account the advancement as made to them as aforesaid. It further appears that slaves of the value of $65,700.50 have been divided, and the amount of

$13,175.00 in value of said slaves have been allotted and set off to Mrs. Rebecca Horn, widow as aforesaid, being thirty-five dollars more than the fifth thereof in value, and that slaves of the value of $52,525.50 have been allotted and set off to said legatees as follows, to wit:

To said Narcissa Lockhart, slaves of the value of $11,650.00; to said Sarah Lockhart, slaves of the value of $9,475.00; to said Mary R. McPhail, slaves to the amount of $8,250.00; to said Frances L. Bryan, slaves to the value of $5,350.50; to said Elizabeth Dumas, slaves to the value of $5,250.00; to said John A. C. Horn, slaves to the value of $12,600.00.

It further appears that, after deducting the slaves, said Rebecca, as aforesaid, in the said balance in cash derived from the personal
30 estate, and on the slaves as allotted to her, and adding the balance of said sum in cash as charges against said adm'r, to the value of said advancements and said slaves so allotted to said legatees, the equal share of each in the aggregate of said sums amount to $14,963.01; and that, after adding to the shares of said Narcissa Lockhart, Sarah Lockhart, Mary P. McPhail, Frances L. Bryan, and Elizabeth P. Dumas, as their shares of the real estate as aforesaid, their respective shares amount to $17,119.21 each. It further appears that said executor has delivered to said widow and to the said legatees, except the said Frances L. Bryan, the slaves allotted to them as aforesaid, and that he has paid and advanced to and for and on account of Charles Lockhart and wife, the sum of $2,136.62; to and on account of said William Lockhart and wife, sum of $2,636.62; to an' on account of said McPhail & wife, sum of $2,136.62; to and on account of said Frances Bryan, sum $850.29; to and on account of E. P. Dumas, sum of $2,324.62; and that he has also advanced to said Rebecca Horn, widow as aforesaid, the sum of $394.26.

31 It further appears that, after deducting the amount of the advancements made respectively by said testator, and the value of the slaves delivered and the several sums respectively paid to and on each of said legatees by said executor as aforesaid, all of which will *now* particularly be seen by reference to the account as stated as aforesaid, there remains due to said legatees the following sums, for which they are entitled respectively to decrees: *and with* to said William & Sarah Lockhart, the sum of six hundred and eight dollars; to said Mary McPhail and wife, $433.09; to said Frances Bryan, $2,718.94; and to said E. P. Dumas, the sum of $928.09; and that these allowances due to said Rebecca Horn, widow, the sum of $759.36. It further appears that said Charles Lockhart and wife have received and been advanced the sum of $76.91 more than their share of the real and personal estate as hereinbefore ascertained & declared.

It further appears that J. A. C. Horn, after deducting the amount advanced by testator and value of slaves allotted to him from his share of the personal estate as herein ascertained, is entitled to retain
32 the sum of $713.00 to make his equal share under the will of said testator. It is, therefore, adjudged, ordered, and decreed by the court that the account and vouchers of said executor, as stated as aforesaid, be allowed and recorded on a partial settlement of said estate; and it is further ordered and decreed that said Rebecca Horn, widow, as aforesaid, recover of said John A. C. Horn, executor as aforesaid, the said sum of $729.16, so found to be due as aforesaid.

The said William Lockhart and wife recover of said executor said sum of $608.09, so found to be due them as aforesaid; that said William McPhail & wife recover of said executor said sum of $433.09, so found to be due them, and that said E. P. Dumas recover of said execu-

tor the said sum of $928.69, so found to be due her as aforesaid. And it being made to appear that there is a suit now pending in the chancery court of County, State of Alabama, wherewith right to possession of the slaves and property, herein ascertained to be the share of the said Frances L. Bryan, is contested with her husband, L. L.
33 Bryan: It is, therefore, further ordered & decreed by the court that said J. A. C. Horn, as executor as aforesaid, hold and retain the slaves so allotted to the said Frances L. Bryan, and the balance in cash, as hereinbefore ascertained to be due her, subject to the further order and decree of this court, to be made on the determination of said chancery suit.

J. A. YOUNG, *Judge.*

34 EXHIBIT "C."

STATE OF ALABAMA, *Marengo County:*

THE ESTATE OF }
JOHN HORN, DEC'D. }

This day came John A. C. Horn, executor of the last will and testament of John Horn, dec'd, and it appearing that John A. C. Horn has heretofore filed his accounts and vouchers for a final settlement of said estate, and that notice of the time and place of said settlement has been given by publication for three successive weeks in the Linden Jeffersonian, a newspaper published in said county, the said account and vouchers came on this day to be heard; and, it appearing that said executor has filed a list of the heirs and legatees of said deceased, all of whom are of full age and of sound mind, and said account and vouchers being by the court audited and stated, showing a balance on the general account with said estate, $2,318.86 in his hands, subject to distribution, derived from the personal estate of said deceased, of which Rebecca Horn, the widow of said deceased, who has dissented from the provisions of his will, is entitled to one-fifth, $463.77, and each
35 of the other legatees to one-sixth of the remainder, amounting to $309.18; and that he has a further balance of $4,933.04 derived from the real estate sold by direction of said testator, and the proceeds thereof devised to Narcissa M. Lockhart, wife of C. J. C. Lockhart; Sarah Lockhart, wife of William Lockhart; Elizabeth P. Dumas; Mary R. McPhail, wife of W'm McPhail; and Frances L. Bryan; the share of each in the balance of the proceeds of land aforesaid, being $986.60.

It further appears that said executor has fully administered said estate, and has discharged all the specific legacies, and distributed the slaves according to the provisions of said will, and has invested the mon*ies* of said estate in 4 per cent. confederate bonds. It is, therefore, adjudged, ordered, and decreed by the court that said account and vouchers, as stated, be passed and allowed as a final settlement of said estate. It further appears that said executor has advanced to Narcissa Lockhart, in part of her distributive share of said balances from
36 the real and personal estate, the sum of $88.61, leaving still due her $1,207.17. It further appears that said executor has advanced to said Mary McPhail, wife of William McPhail, the sum of $213.15, leaving still due her the sum of $182.63 on account of her distributive share of the balances of the personal and real estate aforesaid. And it further appears that said executor has advanced to the said Frances L. Bryan, in part of her said share of said balances, the sum of $300, leaving still due her the sum of $995.98. It further appears that

said Elizabeth P. Dumas has intermarried with one B. O. Nabors, and the said executor now here moves the court that said B. O. Nabors and E. P. Nabors, his wife, be required to execute a bond for the payment and delivery of the share of said estate to which the said Elizabeth P. appears entitled as aforesaid, to the persons who may be entitled to the remainder upon the termination of the life-estate of the said Elizabeth; and, it appearing from the will of said dec'd that the portion of the estate of said testator bequeathed and devised to said Elizabeth
37 P. in the event she should die and leave no child or children surviving her, it is his will that her portion of his property shall go back to her brothers and sisters, and her present or any other future husband shall have no part of it, it is ordered and decreed that said motion be continued, and notice thereof be given to the said Elizabeth P. & B. O. Nabors, and that said executor return the shares of the said Elizabeth P. in said balances until said motion be heard and determined by the court. And it is further ordered, adjudged, and decreed that said John A. C. Horn, as executor as aforesaid, pay to said Rebecca Horn, widow as aforesaid, the said sum of $463.77 as her fifth of said balances of the personal estate as aforesaid in the bonds of the Confederate States so invested by him as aforesaid. It is further ordered and decreed by the court that said John A. C. Horn, executor, pay to said Charles J. C. Lockhart and Narcissa M., his wife, the said sum of $1,207.17, so remaining due them as aforesaid, in confederate
38 bonds as aforesaid. It is further ordered and decreed by the court that said John A. C. Horn pay to said W'm Lockhart and Sarah, his wife, the said sum of $1,295.78, their share of the real and personal estate aforesaid in said bonds of the Confederate States. It is further ordered and decreed that said John A. C. Horn pay to said W'm McPhail and Mary A., his wife, the said sum of $1,082.63, so remaining due them as aforesaid, in bonds of the Confederate States as aforesaid. It is further ordered and decreed that said John A. C. Horn, as executor, &c., pay to said Frances L. Bryan the said balance of $995.78, so remaining due her as aforesaid, in bonds as aforesaid. It is further ordered and decreed that said John A. C. Horn retain the sum of $309.18 as his share of the balances from the personal estate aforesaid. And it is further ordered and decreed that said John A. C. Horn, as executor, retain in hands the said balances of $1,295.78 devised to said B. O. Nabors and wife, subject to the further order and decree of the court
39 upon the determination of the motion of said Horn. And said John A. C. Horn here now files his resignation as executor of said estate, which is ordered to be filed and recorded.

Security for costs.

I hereby agree and bind myself as security for the costs of this suit, in equity in the circuit court of the United States, at the instance of the complainants therein.

Given under my hand this 30th day of October, 1867.

(S'g'd) L. L. BRYAN.

Attest: JNO. T. MORGAN.

[5-c. int. rev. stamp.]

I hereby agree and bind myself as security for the costs of this suit in equity in the cir. court of the U. S. for so. dist. of Ala.

Given under my hands this 15th day of April, 1868.

(S'g) C. E. THAMES.

40 THE STATE OF ALABAMA, *Dallas County:*

Comes John T. Morgan, before the undersigned, justice of the peace for said county, and, being duly sworn, makes oath that William McPhail and Mary McPhail, parties defendants to this suit, resides in Novarro County, in the State of Texas, and are both over the age of twenty-one years.

(S'g'd) JNO. T. MORGAN.

Subscribed and sworn to before me this 9th day of November, 1867.

(S'gn'd) GEO. C. JOHNSON, *J. P.*

Filed November 15th, 1867.

LAWRENCE WORRALL, *Clerk.*

41 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit court for the southern district of Alabama.

The President of the United States to the marshal of said district:

You are hereby commanded to summon John *H.* C. Horn, Leonidas L. Bryan and his wife, Frances L. Bryan, Belton O. Nabors, Elizabeth Nabors, John D. Alexander, individually and as administrator of Joseph M. Alexander and as administrator of Rebecca Horn, and S. S. King, as administrator, who are all citizens of the State of Alabama, to appear before said circuit court on the 4th Monday of December next, to plead, to answer, or demur to the bill of complaint of William Lockhart, Sarah Lockhart, and Narcissa Lockhart, who are citizens of the State of Texas, filed on the 15th day of November, 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court this 1st Monday of January, 1867. Issued Nov. 18th, 1867.

Attest: [SEAL] LAWRENCE WORRALL,
Clk Cir. C't So. Dis. Ala.

42 Any defendant failing to enter his or her appearance in the clerk's office on or before the 1st Monday in January next, the bill will be taken as confessed against such defendant.

(Sig'd) LAWRENCE WORRALL, *Cle'k.*

NOV. 18TH, 1867.

(Endorsed:) Received in marshal's office Nov. 20th, 1867. Executed on L. L. Bryan and wife 26th Nov'r, and J. A. C. Horn 28th Nov. 1867.

R. W. HEALY, *U. S. Marshal.*

(S'g.) By JNO. D. CALDWELL, *Dep'ty.*

Subpœna.

UNITED STATES OF AMERICA:

Circuit court for the southern district of Alabama.

To the President of the United States to the marshal of said district:

You are hereby commanded to summon John *C. H.* Horn, Leonidas

L. Bryan and his wife, Frances L. Bryan, Belton O. Nabors, Elizabeth P. Nabors, John D. Alexander, individually and as administrator of Joseph M. Alexander and as administrator of Rebecca Horn, and S. S. King, as administrator of N. B. Lessuer, who are all citizens of the
43 State of Alabama, to appear before said circuit court on the 4th Monday of December next, to plead, to answer, or demur to the bill of complaint of William Lockhart, Sarah Lockhart, and Narcissa Lockhart, who are citizens of the State of Texas, filed on the 15th day of November, 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States this 1st Monday of January, 1867, with the seal of said circuit court. Issued Nov. 18th, 1867.

Attest:

[SEAL.] (S'g) LAWRENCE WORRALL,
Cle'k Cir. C't So. Dis. Ala.

Any defendant failing to enter his appearance in the clerk's office on or before the 1st Monday of January next, the bill will be taken as confessed against such defendant.

(S'g'd) LAWRENCE WORRALL, *Cle'k.*
NOV., 1867, 18TH.

(Endorsed:) Received in marshal's office Nov. 20th, 1867. I hereby depute Jacob Michael, jr., to execute the within precept.

(S'g'd) R. W. HEALY, *U. S Marshal.*
NOV. 22D, '67.

44 (Endorsed:) The parties could not be found.

R. W. HEALY, *U. S. Marshal.*
(S'g'd) By J. MICHAEL, JR, *Deputy.*
DEC. 16TH, 1867.

Subpœna.

UNITED STATES OF AMERICA:

Circuit court for the southern district of Alabama.

The President of the United States to the marshal of said district:

You are hereby commanded to summon John A. C. Horn, Leonidas L. Bryan and his wife, Frances L. Bryan, Belton O. Nabors, Elizabeth P. Nabors, John D. Alexander, individually and as administrator of Joseph M. Alexander and as administrator of Rebecca Horn, and S. S. King, as administrator of N. B. Lesuer, who are all citizens of the State of Alabama, to appear before said circuit court on the 4th Monday of December next, to plead, to answer, or demur, to the bill of complaint of William Lockhart, Sarah Lockhart, and Narcissa Lockhart, who are citizens of the State of Texas, filed in said court on the 15th day November, 1867.

45 Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court, this 1st Monday of Jan'y, 1867, and the seal of said circuit court. Issued Nov. 18th, 1867.

Attest:

[SEAL.] (S'g'd) LAWRENCE WORRALL, *Clk.*

Any defendant failing to enter his or her appearance in the clerk's office on or before the 1st Monday of January next, the bill will be taken as confessed against such defendant.

Nov. 18th, 1867.

(S'g'd) LAWRENCE WORRALL,
Cl'k Cir. C't So. Dist. Ala.

(Endorsed:) Received in marshal's office Nov. 20, '67. Executed Nov. 25th, 1867, by handing each, Belton O. Nabors and Elizabeth P. Nabors, copy of this writ, in Shelby Co., Ala.

R. W. HEALY, *U. S. Marshal.*
P'r THOMAS HARRISON,
Special Deputy.

46 *Demurrer.*

WILLIAM LOCKHART AND WIFE ET ALS.
vs.
JOHN A. C. HORN ET AL. } In chancery.

United States circuit court southern district of Alabama.

The defendant John A. C. Horn, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer showeth the said complainants hath not by their said bill made such a case as entitles them in a court of equity in this honorable court, to any discovery or relief from or against this defendant, touching the matters contained in the said bill of complaint or any portion thereof.

And for more specific causes of demurrer, this defendant alleges & propounds the following, to wit:

1st. Because it appears by the said bill of complaint that the actual complainants in the said bill are all the heirs of the said John
47 Horn, deceased, except the said defendant John A. C. Horn, although some of said heirs are named in said bill as defendants. The prayer of the said complainants in said bill shows this fact. It therefore appears that it is an attempted fraud upon the jurisdiction of this honorable court. This honorable court has, therefore, no jurisdiction of the said parties complainants, or to administer the relief which they seek; and this appears from the face of the bill itself.

2d. It further appears by the complainants' own showing on the face of the said bill that said defendant John A. C. Horn, has managed and controlled the estate of the said John Horn, dec'd, in a manner strictly legal and according to the laws of the State of Alabama, and the complainants are entitled to no relief whatever by their own showing.

3d. Because it appears by the allegations of the bill itself, that the said will of the said John Horn, deceased, was duly and legally
48 established according to law, and no reason is assigned or alleged for setting the same aside, nor is any valid reason assigned or alleged for setting any of the settlements made in the estate of the said John Horn, deceased, by the said defendant John A. C. Horn, as the legal representative of the said estate.

4th. Because it appears by the said bill of complaint that the said

complainants are barred from the relief which they seek by the lapse of time.

S. J. CUMMINGS AND
L. GIBBONS,
Solicitors of John A. C. Horn.

Filed February 18th, 1868.
(S'g) N. W. TRIMBLE, *Clerk.*

49 *Alias subpœna.*

UNITED STATES OF AMERICA:

Circuit court for the southern district of Alabama.

The President of the United States to the marshal of said district:

You are hereby commanded, as you have heretofore been, to summon John A. C. Horn, Leonidas L. Bryan and his wife, Frances L. Bryan, Belton O. Nabors, Elizabeth P. Nabors, John D. Alexander, individually and as administrator of Joseph M. Alexander and as administrator of Rebecca Horn, and S. S. King, as administrator of N. B. Lessuer, who are all citizens of the State of Alabama, to appear before said circuit court on the 2d Monday of April, 1868, to plead to, answer, or demur to the bill of complaint of William Lockhart, Sarah Lockhart and Narcissa Lockhart, who are citizens of the State of Texas, filed on the 15th day of November, 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States and the seal of said circuit court, this 1st Monday of Jan'y, 1868.

Issued April 4th, 1868.

[SEAL.] (S'g) N. W. TRIMBLE,
Clk Cir. C't So. Dis. Ala.

50 (Endorsed:)

Issued April 4th, 1868.

Executed April 13th, 1868, by leaving copy with J. D. Alexander and S. S. King, at Marengo Co., Ala.

R. W. HEALY, *U. S. Marshal.*
By J. MICHAEL, JR., *U. S. Deputy.*

Answer of William McPhail & Mary McPhail.

Circuit court of the United States for the southern district of Alabama.

WILLIAM LOCKHART AND WIFE, AND NARCISSA Lockhart, *vs.* JOHN A. C. HORN, WILLIAM MCPHAIL, MARY McPhail, et als.	In chancery.

The joint answer of William McPhail and Mary McPhail to the bill of complaint filed by William Lockhart and wife and Narcissa Lockhart against John A. C. Horn and these respondents and others in the circuit court of the United States for the southern district of Alabama.

These respondents answering the said bill, or so much thereof

51 as they are advised that it is material for them to make answer unto, answering say:

§§ 1 & 2. They admit the statements of sections one and two of said bill to be true as therein alleged.

§§ 3 to 12 inclusive. These respondents, answering the remainder of said bill as contained in sections three to twelve, inclusive, say that, residing in the State of Texas far distant from the scene of occurrences therein alleged, they do not know of their own knowledge of the truth of the matters alleged in said sections of the bill, but they believe them to be true, and they, therefore, are willing to admit them to be true. And they furthermore say that the said John A. C. Horn has never accounted to them for the share of the estate of John Horn, deceased, rightfully coming to respondent Mary McPhail. And they therefore ask upon a settlement of said estate of John Horn, deceased, in this honorable court, she, the respondent, Mary McPhail, may have a decree for her share thereof. And having fully answered, respondents pray to be hence dismissed with their reasonable costs in this behalf expended.

JAMES W. LAPSLEY,
Sol. for Def'ts William McPhail & Mary McPhail.

Filed April 16th, 1868.
(S'g.) N. W. TRIMBLE, *Clerk.*

52 *Agreement as to taking testimony.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

LOCKHART AND WIFE
vs.
JOHN A. C. HORN ET AL. } In chancery.

It is this day agreed in writing, in open court, by and between the solicitors for complainants and defendants, in consideration that ninety days' time be given to defendants to file full answers to complainants' said bill of complaint; that the said complainants are to be permitted to take testimony of their witnesses in the same manner as if the issues were formed upon the coming in of the answer, and are to be heard in evidence in all respects, as if taken after the issues are formed, upon filing interrogatories and giving notice as required by the rules of practice in such cases.

Mobile, May 6th, 1868.

S. J. CUMMING.
By L. G.
L. GIBBONS,
Solicitors for Horn.
JOHN T. MORGAN.
WILLIAM BOYLES,
Sols. for Pl'ffs.

53 Circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

WEDNESDAY MORNING, *May 6th*, 1868.

Court met pursuant to adjournment. Present, the Hon. Richard Bus-

complainants are barred from the relief which they seek by the lapse of time.

S. J. CUMMINGS AND
L. GIBBONS,
Solicitors of John A. C. Horn.

Filed February 18th, 1868.
(S'g) N. W. TRIMBLE, *Clerk.*

49 *Alias subpœna.*

UNITED STATES OF AMERICA:

Circuit court for the southern district of Alabama.

The President of the United States to the marshal of said district:

You are hereby commanded, as you have heretofore been, to summon John A. C. Horn, Leonidas L. Bryan and his wife, Frances L. Bryan, Belton O. Nabors, Elizabeth P. Nabors, John D. Alexander, individually and as administrator of Joseph M. Alexander and as administrator of Rebecca Horn, and S. S. King, as administrator of N. B. Lessuer, who are all citizens of the State of Alabama, to appear before said circuit court on the 2d Monday of April, 1868, to plead to, answer, or demur to the bill of complaint of William Lockhart, Sarah Lockhart and Narcissa Lockhart, who are citizens of the State of Texas, filed on the 15th day of November, 1867.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States and the seal of said circuit court, this 1st Monday of Jan'y, 1868.

Issued April 4th, 1868.
[SEAL.] (S'g) N. W. TRIMBLE,
Clk Cir. C't So. Dis. Ala.

50 (Endorsed:)

Issued April 4th, 1868.

Executed April 13th, 1868, by leaving copy with J. D. Alexander and S. S. King, at Marengo Co., Ala.

R. W. HEALY, *U. S. Marshal.*
By J. MICHAEL, JR., *U. S. Deputy.*

Answer of William McPhail & Mary McPhail.

Circuit court of the United States for the southern district of Alabama.

WILLIAM LOCKHART AND WIFE, AND NARCISSA Lockhart, *vs.* JOHN A. C. HORN, WILLIAM MCPHAIL, MARY McPhail, et als.	In chancery.

The joint answer of William McPhail and Mary McPhail to the bill of complaint filed by William Lockhart and wife and Narcissa Lockhart against John A. C. Horn and these respondents and others in the circuit court of the United States for the southern district of Alabama.

These respondents answering the said bill, or so much thereof

51 as they are advised that it is material for them to make answer unto, answering say:

§§ 1 & 2. They admit the statements of sections one and two of said bill to be true as therein alleged.

§§ 3 to 12 inclusive. These respondents, answering the remainder of said bill as contained in sections three to twelve, inclusive, say that, residing in the State of Texas far distant from the scene of occurrences therein alleged, they do not know of their own knowledge of the truth of the matters alleged in said sections of the bill, but they believe them to be true, and they, therefore, are willing to admit them to be true. And they furthermore say that the said John A. C. Horn has never accounted to them for the share of the estate of John Horn, deceased, rightfully coming to respondent Mary McPhail. And they therefore ask upon a settlement of said estate of John Horn, deceased, in this honorable court, she, the respondent, Mary McPhail, may have a decree for her share thereof. And having fully answered, respondents pray to be hence dismissed with their reasonable costs in this behalf expended.

JAMES W. LAPSLEY,
Sol. for Def'ts William McPhail & Mary McPhail.

Filed April 16th, 1868.
(S'g.) N. W. TRIMBLE, *Clerk.*

52 *Agreement as to taking testimony.*

In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

LOCKHART AND WIFE *vs.* JOHN A. C. HORN ET AL. } In chancery.

It is this day agreed in writing, in open court, by and between the solicitors for complainants and defendants, in consideration that ninety days' time be given to defendants to file full answers to complainants' said bill of complaint; that the said complainants are to be permitted to take testimony of their witnesses in the same manner as if the issues were formed upon the coming in of the answer, and are to be heard in evidence in all respects, as if taken after the issues are formed, upon filing interrogatories and giving notice as required by the rules of practice in such cases.

Mobile, May 6th, 1868.

S. J. CUMMING.
By L. G.
L. GIBBONS,
Solicitors for Horn.
JOHN T. MORGAN.
WILLIAM BOYLES,
Sols. for Pl'ffs.

53 Circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

WEDNESDAY MORNING, *May 6th*, 1868.

Court met pursuant to adjournment. Present, the Hon. Richard Bus-

teed, judge of the United States district courts for the State of Alabama, sitting as circuit judge.

* * * * * * *

Order of court overruling demurrer.

In the circuit court of the United States for the 5th judicial circuit & southern district of Alabama.

WILLIAM LOCKHART ET ALS.
vs.
JOHN A. C. HORN ET ALS.

This cause came on for a hearing on the demurrers of the defendants to the bill of complaint, and, after argument and upon consideration thereof, it is ordered, adjudged, and decreed by the court that the said demurrer be overruled; that the defendant be allowed ninety days to file an answer to said bill of complaint.

54

Seperate answer of John A. C. Horn.

In chancery before the honorable the judges of the circuit court of the United States for the southern district of Alabama, at Mobile.

The seperate answer of John A. C. Horn, one of the defendants to the bill of complaint filed in this honorable court by William Lockhart and Sarah Lockhart, his wife, and Narcissa Lockhart, complainants, against John A. C. Horn, and others, defendants.

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant that he admits that the said John Horn died in Marengo County, Alabama, in the month of March, 1858, and that he was, at the time of his death, a resident citizen of said county of Marengo. He admits that he, said John Horn, left surviving him at the time of his death his widow, Rebecca Horn, and his children, Sarah Lockhart, wife of William Lockhart; Narcissa Lockhart, then the wife of Charles J. C. Lockhart; Mary McPhail, wife of William McPhail; Frances L. Bryan, wife of Leonidas L. Bryan; Elizabeth P. Dumas, a widow, and John A. C. Horn, this defendant; that all of said heirs were over twenty-one years of age at the time of the death of said John Horn; that said Frances L. Bryan and Leonidas L. Bryan, and this defendant reside in Wilcox County, Alabama; that said Elizabeth P. Dumas has, since the death of said John Horn, intermarrried with one Belton O. Nabors and said Nabors and wife reside in Shelby County, Alabama; that said McPhail and wife; said Sarah Lockhart and William Lockhart, and said Narcissa Lockhart, as this defendant has been informed, all now reside in Novarro County, Texas, and said Charles J. C. Lockhart, late husband of said Narcissa Lockhart, died about the month of February, 1864.

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And this defendant, further answering, admits that, on the 5th day of April, 1858, letters of administration ad colligendum upon the estate of said John Horn, deceased, were granted by the probate court of Ma-

rengo County, Alabama, to this defendant, and that he gave bond, as such administrator, in the sum of one hundred thousand dollars, with Joseph M. Alexander and N. B. Lessuer as his securities. Defendant admits that, on the 5th day of July, 1858, he filed in the probate court of said Marengo County his petition in writing, and under oath, alleging that the said John Horn died in March, 1858, leaving a will, and that said will had been lost, mislaid, or destroyed since the death
57 of said John Horn, and could not be found, though dilligent search and enquiry had been made therefor; and annexed to said petition was a substantially true and correct copy of the last will and testament of said John Horn, deceased; that, by an order of said probate court of Marengo County, Alabama, the said petition for the probate of said will was set for a hearing on the second Monday in September, 1858, and it was further ordered by said court that notice of the time and place of hearing said petition be given by publication for three successive weeks in the Linden Jeffersonian, a newspaper published in the county of Marengo, for the non-resident heirs and next of kin to appear and contest said application to probate said will if they saw fit, and that citations issue to the next of kin of said John Horn, deceased, resident in the State of Alabama; and this defendant states that, in his said petition filed in said probate court for the probate of said will, he set forth the names, ages, and residences of the widow and of all of the next of kin of said John Horn, deceased, fully and correctly, both resi-
58 dents and non-residents, and he further states that citations were issued by said probate court, and served upon said widow and next of kin in the State of Alabama for more than ten days set for the hearing of said petition, and that notice of said application was given to the next of kin of said John Horn, deceased, non-resident in the State of Alabama, by publication in said newspaper, the Linden Jeffersonian, as required by the order of said court; and this defendant attaches to this his answer a transcript of the proceedings, orders, and decrees in the probate court of said Marengo County in the matter of the settlement of the estate of the said John Horn, deceased; and in the matter of the probate of the will of said John Horn, marked Exhibit "A," consisting of eighty-one pages, together with the certificate of the judge of said probate court and the seal of said court attached thereto, all and every part of which said transcript this defendant prays may be taken and held as a part of this defendant's answer in this case, and referred to by this honorable court as often as may be necessary.

59 That, on the said second Monday in September, 1858, the said application and petition for the probate of said will came on for a hearing before the probate court aforesaid and a jury, and this defendant avers and distinctly charges that, on the said trial and contest as to the probate of said will, the said complainant, William Lockhart, and Sarah Lockhart, his wife, and said Narcissa Lockhart, and also her late husband, Cha's J. C. Lockhart, were present in their own proper person or by their attorneys, and participated in said contest respecting the probate of said will in said probate court, and resisted the probate thereof before said court and jury; and this defendant further avers and says that, the trial of the said issue as to said will, the jury then and there by said probate court empannelled and sworn to try said issue, found a verdict in favor of the said will, and set the same up as the last will and testament of said John Horn, deceased, in substance, manner, and form, as set forth in this defendant's said application for the
60 probate thereof; and thereupon the said probate court entered a decree probating said will of the said John Horn, deceased; all of

which will more fully appear by reference to said Exhibit "A," and more particularly to pages 13, 14, 19, 20, 21, 22, and 23 of said Exhibit "A," which are hereby referred to and prayed to be taken as a part of this answer; and this defendant pleads those portions of said Exhibit "A" relating to the contest and adjudication upon the said will by way of estoppel and in bar of the complainants' rights to be reheard on the same questions there decided; and this defendant alleges and charges that the adjudication of the said probate court upon the issues "devisavit vel non" are still in full force, unreversed and unimpeached in any manner whatever, and all the allegations of said bill in that regard are "res judicata" between the parties in this case; and the complainants have no right to go behind the judgment of that probate court so far as these questions are concerned.

61 And this defendant, further answering, admits that, after the probate of the said will as aforesaid, and on the 22d day of November, 1858, he duly qualified as executor under said will, and gave bond in the sum of one hundred thousand dollars, with N. B. Lessner and J. D. Alexander as his securities, said bond being conditioned that this defendant shall and do well and truly perform all the duties which are or may be by law required of him as such executor of John Horn, dec'd; and this defendant avers that he has fully and completely complied with the conditions of said bond, and has been duly discharged therefrom by said probate court.

And this defendant, further answering, saith that the said John Horn did make and execute his last will and testament as set forth in the application of this defendant for the probate thereof, and as found by the said jury on the said contest of said will, which will more fully appear by reference to page 17 and 23 of said Exhibit "A."

62 And this defendant positively denies that the said John Horn died intestate and without leaving a duly executed will in existence at the time of his death; but this defendant avers the truth to be that the said John Horn died testate, leaving a will in existence, duly executed and witnessed, according to the laws of Alabama in such case made and provided, and that the copy of said will, probated by said probate court of Marengo County, in substance and fact, a true and correct copy of the last will and testament of said John Horn, deceased; and this defendant is informed, and believes it to be true, that the said last will and testament of said John, so left by him at the time of his death, was, after the said John Horn's death, abstracted from the trunk of said John Horn and destroyed by some person or persons.

And this defendant, further answering, admits that, after he had duly qualified as such executor under the said will, he took into his possession the property belonging to said estate of John Horn, and collected the debts due to said estate as by law it was his duty to do, and administered the same as by the laws of the State of Alabama, he was

63 required to do. His actings and doings as such will fully appear to this honorable court by reference to said Exhibit "A." To all and every part of said Exhibit A, reference is here again prayed as part of this answer. This defendant denies that, from the sale of the real and personal property of said estate, he derived the sum of thirty thousand dollars, but he avers the truth to be as follows: That from the total sales of all the personal property, including cotton, of said estate, he received and collected about the amount of twenty-six thousand dollars in all kinds money, (see Exhibit "A;") and from the total sales of all the real estate belonging to said estate, he received about the amount of fifteen thousand dollars in all kinds of money, (see Exhibit "A.")

He denies that he ever hired out any of the slaves belonging to said estate, or received any money for the hire of any of said slaves, except what is charged against this defendant in his settlement of said estate with said probate court. But he avers the truth to be that the said John Horn died in the month of March, 1858, in the possession of said slaves, and at the time of the death of the said John Horn
64 the said slaves were employed in making a crop on the plantation of the decedent, and said slaves remained on said plantation engaged in making the crop of 1858, under the direction and control of this defendant, as executor, according to the provisions of section 1900 of the code of Alabama, said section 1900 being then and ever since, up to the emancipation of the slaves in Alabama, in force and unrepealed in said State of Alabama. A copy of said section 1900 is hereto attached, marked Exhibit B, and prayed to be taken and referred to as part of this answer. This defendant being satisfied that the estate of the said John Horn was solvent, he did, on the 30th day of November, 1858, file his petition in the said probate court of Marengo County, praying for an order to divide all the slaves belonging to said estate among the legatees of said John Horn, deceased, according to the terms and provisions of said will—the widow having dissented from said will as is hereinafter fully set forth. That upon said petition such proceedings were had that, on the second Monday in December, 1858, the
65 prayer of said petition was granted, and an order was made by said court appointing commissioners to divide said slaves according to the provisions of said will, and a commission issued accordingly. That, under and by virtue of said commission, said commissioners made a division of said slaves, on the 9th day of January, 1859, amongst said legatees and the widow, and reported the same to said probate court, and said report and division was by said court in all things confirmed and ordered to be recorded. That this defendant, after the division so made by said commissioners, on the day aforesaid, delivered over to the widow of the deceased (Rebecca Horn) and to each of the legatees under said will, all the slaves allotted to each by said commissioners and took their receipts therefore. That this defendant was afterwards, by the decree of said probate court, on the partial settlement, required to hold and retain the slaves allotted to said Frances L. Bryan, as therein stated. That said delivery took place in the month of January, 1859, as will appear from the date of the
66 receipts of Elizabeth P. Dumas, Frances L. Bryan, and Rebecca Horn. That the slaves allotted to the complainants in this case were delivered up to them respectively, and were taken, received, and accepted by them under said division, and the order of the said probate court; and this defendant avers and charges that the complainants in this case namely, the said William Lockhart and Sarah, his wife, and the said Narcissa Lockhart, received the slaves allotted to them as aforesaid, and have held the same ever since, up to their emancipation at the close of the late war, in 1865. That copies of the receipts of said complainants, for said slaves will be found on page' 53 & 54 of said Exhibit "A," which are hereby referred to. That it appears from said Exhibit A "that the receipts of said complainants, by some omission were not dated, but this defendant avers the truth to be that the said slaves were delivered to said complainants in the month of January, 1859, and that said receipts should bear date at that time.

And this defendant, further answering, denies that he is liable
67 to the complainants or the heirs or legatees of said estate for the value of the rent of any of the lands belonging to said estate.

He alleges that, under and by virtue of the powers invested in him by the said will of the said John Horn, he was authorized to sell, and did sell, for the purposes in said will specified, all the real estate belonging to the said Jno. Horn, at the time of his death, except such portions thereof as was devised in and by said will to this defendant. That he sold said lands on the eight' day of January, 1859, and this defendant positively denies that he has ever received any rents for any of said lands, or was entitled, authorized, or required to receive or collect any rents for any of said lands. But he avers that the widow of the deceased, the said Rebecca Horn, dissented in due form of law from the provisions of said will; that the said Rebecca filed her petition for dower in said probate court, but afterwards, and before final action thereon, she dismissed her said petition, and, by a written consent and agreement entered into by all the heirs and distributors of said estate
68 and the said Rebecca, certain lands were set apart to her for her dower. That all the lands owned by said John Horn at the time of his death were disposed of by said will, a large portion thereof being devised to this defendant, and the remainder was to be sold, and the proceeds divided among certain legatees named in said will, and this defendant refers to page' 23 & 24 of said Exhibit " A" for a copy of said will. This defendant states that he made full, correct, and true returns of all the sales of property, both real and personal, belonging to said es'ate sold by him; that all of said sales took place under and by virtue of orders granted by said probate court in the regular administration of said estate in said court, and he has fully and completely accounted in said court for all the proceeds arising from said sales, in his returns to said probate court and in his settlements of said estate; and he hereby refers to the said orders and reports of sales on page 2, 25, 31, 33, 34, 39, & 44 of said " Exhibit A;" and this defendant avers that in his said settlements of said estate, in the probate court of Marengo County, he has fully accounted for everything belonging to said estate
69 that has ever come to his knowledge or possession.

And this defendant, further answering, admits that the said Rebecca Horn died in the year 1865, and that one John D. Alexander became the administrator upon her estate, but this defendant states that he is informed and believes it to be true, that said J. D. Alexander has resigned his administration and made a final settlement thereof, and one Richard H. Clarke, of said Marengo County, has been duly appointed administrator de bonis non of said Rebecca Horn.

This defendant further admits that said N. B. Lessuer departed this life in the said county of Marengo about the year 1860; that defendant has been informed and believes it to be true, that said Lessuer died, leaving a will, and by said will, appointed one S. S. King and one W. B. Modawell his executors; that said executors have since resigned and settled up their administration of said estate, and have been discharged, and that one Richard H. Clarke, of said Marengo County, is now the administrator de bonis non on said estate of N. B. Lessuer, deceased.

This defendant further admits that the said Joseph M. Alexan-
70 der departed this life in Marengo County aforesaid about the year 1864, and that he left a will by which, as this defendant has been informed, he appointed D. C. Alexander and J. D. Alexander his executors, and that said estate is believed still unsettled in the probate court of Marengo County.

And this defendant, further answering, admits that, on the second Monday in July, 1859, he filed in said probate court of Marengo County his accounts and vouchers for a partial settlement of his administration

of said estate, (see page 38 of Exhibit A,) and, after several continuances, regularly made in said court, said accounts and vouchers came on to be heard in said probate court, at a special term thereof, held on the 21st day of May, 1860. And this defendant here distinctly states, avers, and charges that, on said partial settlement, made on the said twenty-first day of May, 1860, in said probate court of Marengo County all of said complainants were present in their own proper persons, or by their attorneys, and contested said settlement; and, on the 27th day of April, 1860, notice was served on this defendant to produce the original sale bill of said estate on the hearing of said account and vouchers,
71 said notice being signed by the attorneys for the complainants in this case. And on or shortly before said partial settlement was had, the complainants, together with other heirs and legatees of said estate, filed in said probate court their objections and exceptions to the said account and vouchers so filed for said partial settlement.

And this defendant refers to pages from 55 to 62, inclusive, of said Exhibit A, for said notice, objections, exceptions, and decree, in said partial settlement, and prays that the same may be referred to by this honorable court as part of this answer; and this defendant avers that said partial settlement was fairly and justly made and in accordance with the requirements of the laws of Alabama in such cases made and provided; that due and legal notices of said partial settlement was given both as to the resident and non-resident heirs and legatees of said estate. And this defendant further saith that, on said partial settlement the amount decreed in favor of the complainants William Lockhart and wife, Sarah, was six hundred and eight $\frac{09}{100}$ dollars; and it appears from said decree and from the account on which said decree was
72 founded that, on said partial settlement the complainant Narcissa Lockhart, had received by advancements and by the excess of the value of the slaves received by her, sixty-six $\frac{91}{100}$ dollars over and above the amount due her from said estate on said partial settlement, (Exhibit A, p. 66;) that, on the 26th May, 1860, and after the said partial settlement had been completed and the decree rendered, the said complainant William Lockhart received from this defendant as executor of said John Horn, dec'd, the amount of the said decree on said partial settlement in favor of said William Lockhart and Sarah, his wife, and as husband gave his receipt to this defendant therefore in full discharge of said decree in their favor on said partial settlement, as by the law of Alabama he had power to do; a true copy of which receipt is on page 69 of said Exhibit "A," and is hereby referred to. And this defendant says that, whether or not the said decree of May, 1860, on said partial settlement has been carried out and executed as to the said Frances L. Bryan and Elizabeth P. Nabors, (formerly Dumas,) is not a matter about which the complainants can complain or set up against the validity of said partial settlement on the decree thereon; that, so far as the complainants are concerned, they have recognized, acted under, and
73 taken the benefit of said decree on said partial settlement, and they have fully recognized, acted under, and taken the benefit of all the proceedings in the matter of the trials and settlements in said estate, at least up to and including said partial settlement; and this defendant pleads the proceedings in said Exhibit A in reference to said partial settlement of said estate in bar and by way of estoppel of said complainants rights to further contest or litigate over again the matters and things settled and decided in that settlement; and this defendant shows to the court and charges that the said settlement is still in full force unreversed, and has never been ap'ealed from in any manner

whatever, but has always been acted upon and treated by the said complainants themselves as a valid and subsisting settlement of said estate up to that point; that the complainants have never returned, or offered to return, to this defendant or to said estate the monies or property they have received from said estate, but have retained, and still retain the same, except the slaves, which have been emancipated; and this defendant alleges and charges, that the matters and things
74 passed upon and decided in that settlement are "res judicata" between the parties litigant therein.

And this defendent, further answering, saith that, on the 6th day of August, 1860, William McPhail and wife and others of said legatees, including these complainants, by their attorney, made application to the said probate court of Marengo County for a citation to issue to this defendant as executor of said John Horn, dec'd, requiring this defendant to appear to file his account and vouchers for a final settlement of said estate. And, on the 28th day of January, 1861, the said McPhail and wife again applied to said probate court for a similar citation, (see page 71 & 72 of Exhibit "A.") Continuances were granted by said court from time to time, and, on the 20th day of January, 1864, this defendant as such executor filed his account and vouchers for a final settlement of said estate, and the third Monday in March, 1864, was set for the hearing of said final settlement. And it was further ordered by said court that notice of said final settlement be given by publication for three successive weeks in the "Linden Jeffersonian" newspaper. This
75 defendant further states, that the time he filed his said account and vouchers for a final settlement of said estate, he filed a statement on oath of the names of the heirs and legatees of said estate, stating that all were of full age and compos mentis, and stating which were married women and which were non-residents; that, on the second day of May, 1864, this defendant filed in said probate court his resignation of the office of the executor of the estate of John Horn, deceased; that, after several continuances, the first Monday in May, 1864, was set for the said final settlement, and on that day said settlement was had, and the decree of said probate court was rendered thereon, which decree is set out in full on pages 73 to 78 of said Exhibit "A," and prayed to be referred to as part of this answer; that notice of said final settlement was given as required by the order of said court and by the laws of Alabama, by publishing said notice in the "Linden Jeffersonian," a newspaper published in said county of Marengo, for three successive weeks, as appears from a certified copy of said notice in said Ex-
76 hibit "A," and from the recitals in the final decree. (See pages 70 and 73 of said Exhibit A.) And this defendant having resigned his said executorship and having fully and finally settled up his administration of said estate was discharged from said trust by the decree of said probate court, on the first Monday in May, 1864, and this defendant avers that the said newspaper in which said notice was published, the "Linden Jeffersonian," was a newspaper published in said county of Marengo; that said final settlement was made in accordance with the requirements of the laws of Alabama in such cases made and provided, and after due and legal notice to the complainants are bound thereby.

This defendant admits that, at the time said final settlement was made in the said probate court of Marengo County, war was then pending between the United States and the States called the Confederate States; but defendant denies that it was then impossible for the complainants to reach said Marengo County; and this defendant denies that the

hostile armies formed a complete barrier against communication between the people of Texas and Alabama. He states that he has
77 been informed and believes it to be true that, at the time of said final settlement, and up to that time, letters and newspapers passed between the States of Alabama and Texas. That the complainants and the other heirs and legatees of said John Horn, deceased, were urging this defendant to make a final settlement of said estate, and citations were issued requiring, citing, and commanding this defendant to make a final settlement of said estate. And this defendant further says that he has been informed, and believes said information to be true, and on said *and on said* information and belief charges that it is true that said complainants had actual as well as legal notice of said final settlement before the same was had, and this defendant therefore denies that the complainants had no notice of said final settlements.

And this defendant, further answering, admits that he is in possession of the said tract of seven hundred and twenty (720) acres of land specified in section 12 of said original bill of complaint. That he has had possession of the same since some time in the year 1859. But he denies that he is liable for or can be charged with any rents
78 for said lands. That the widow, Rebecca Horn, having dissented from said will, by the terms of said will and the law in such cases, this defendant became entitled to the immediate possession of said lands under said will; and he denies that said lands were worth an annual rent of three thousand six hundred dollars.

And this defendant, further answering, saith that he denies that all the money received by this defendant from the property and assets of the said estate of John Horn were received by this defendant in sound funds, the equivalent of specie. He avers the truth to be that, at the time of the commencement of the late war between the United States and the Confederate States, a large amount of the purchase-money for said land sold by this defendant as executor, was still due by the purchaser, one Craighead, and unpaid. That said Craighead died without paying all of the purchase-money for said lands. That said sale took place on the eight'day of January, 1859, on a credit of twelve months, making the purchase-money due on January 8th, 1860. That the land purchased at said sale by said Craighead amounted to ten thousand
79 four hundred dollars, (see "Exhibit A," p. 44.) That said Craighead before his death arranged with this defendant on said land purchase six thousand two hundred and forty dollars ($6,240 00) in good money, and this defendant has accounted for the same in his said partial settlement, (see "Exhibit A," page 62;) that, in the months of February and December, 1861, the legislature of Alabama passed laws by which the time within which a judgment could be obtained and money collected by execution in the courts of that State, was very much delayed. And the said Craighead dying not long after the said purchase-money for said land became due, by the laws of Alabama no judgment could be rendered against his said estate until eighteen months after the grant of letters of administration on said Craighead's estate, which would make the earliest time at which a judgment could have been obtained against Craighead's estate for said purchase-money sometime in the year 1862 or 1863, and it could then only have been collected in confederate treasury notes. That, in the month of October, 1862, this defendant received from said Craighead' administratrix the bal-
80 ance of the money so due as aforesaid arising from the sale of the said lands in confederate treasury notes amounting to the sum of five thousand and seventy-five $\frac{20}{100}$ dollars, say $5,075.20, that

being the amount of the balance due on said lands. That the complainants and the other heirs and legatees of said estate were urging a final settlement of said estate. That the only currency and money in circulation in the State of Alabama, in the year 1862, 1863, 1864, and 1865, up to the close of the war, was confederate treasury notes, and notes of the State of Alabama redeemable in confederate treasury notes; and the complainants were informed and well aware of the condition of the currency of the country, and of what that currency consisted; and, notwithstanding such state of the currency, the complainants still urged and insisted on a final settlement of the said estate. That, by an act of the legislature of the State of Alabama, passed in November, 1863, and by the third section of an act of the legislature of Alabama, passed in November, 1861, this defendant was authorized to take and receive Confederate State' treasury notes in payment
81 of the debts due the estate of the said John Horn, deceased, and by the second and fourth sections of another act of said legislature, passed in February, 1866, executors and administrators were discharged from all liability on account of taking such confederate treasury notes in payment of the debts due the estates administered on by them, if such confederate treasury notes were taken by them in good faith; a true and correct copy of each of the said acts of said legislature and of each of said sections of said acts is hereto attached, marked "Exhibit C," and prayed to be taken as part of this answer and referred to as often as may be necessary.

And this defendant further says that, by an act of a body of men known and called "The congress of the Confederate States," said body of men then exercising legislative power within the States known and called the Confederate States, of which the State of Alabama was one, it was enacted that any one who refused to take confederate treasury notes in payment of debts due them, should be taxed thereon as if such debts were gold, and the taxes thereon should be paid in gold;
82 that this defendant had no gold or specie, either of his own or belonging to said estate, to pay such taxes with, and he was under the necessity of receiving confederate money in payment of the indebtedness to said estate. Said act of the said body of men, known as the confederate congress, was passed in the year 1862, or 1863, as he believes, and a true and correct copy of that portion thereof hereinbefore mentioned is hereto attached, marked Exhibit "D," and prayed to be taken as a part of this answer, and referred to as often as may be necessary; that, in compliance with, and under the compulsion of said State and confederate laws set forth in Exhibits C & D, this defendant received confederate treasury notes in payment of the balance due for said lands, and in payment of other debts due said estate; that at the same time this defendant was receiving and did receive confederate treasury notes in payment of the indebtedness to him individually; that in receiving said confederate treasury notes in payment of the indebtedness to said estate as aforesaid, this defendant acted in good faith and for
83 what he believed to be the true interest of said estate and of all parties interested in said estate, without the slightest intention or thought of injuring the complainants or any of the heirs and legatees of said estate.

And this defendant, further answering, saith that all the confederate treasury notes received by him as aforesaid on account of said estate, were of the class of confederate treasury notes dated and issued prior to the (17th) seventeenth day of February, 1864, and denominated and known as the old issue confederate treasury notes; that in the

month of February, 1864, the said body of men known as the "confederate congress," passed an act requiring all persons having confederate treasury notes known as the old issue, to deposit the same within a certain time in said act stated, with certain officers therein named, for the purpose of obtaining registered bonds of the Confederate States of America, bearing interest at the rate of four per cent. per annum therefore, or of obtaining confederate treasury notes of the new issue
84 therefore to the amount of two-thirds of the amount deposited; and said act so passed by said confederate congress as it was called, required said "old issue" to be so deposited within a certain time therein mentioned, or said old issue would become utterly worthless. A correct copy of a portion of said act is hereto annexed and attached, marked Exhibit E, and is prayed to be taken as part of this answer and referred to as often as may be necessary and proper; that said act of the confederate congress, as it was called, was recognized as being of force in the State of Alabama by an act passed by the legislature of said State of Alabama, on the 13th day of December, 1864, a correct copy of which said act is hereto attached, and marked "Exhibit F," & prayed to be taken as part of this answer, and referred to as often as may be necessary; that, in compliance with the terms of said acts "Exhibits E & F," passed by the confederate congress, as it was called, and by the legislature of Alabama, this defendant, in good faith,
85 and, as he believed, for the best interest of said estate, and by the advice of his attorneys, deposited with the depository W. M. Smith, at Selma, Alabama, on the sixteenth day of March, 1864, all the confederate treasury notes which he had received for and on account of said estate. and which he had then on hand, amounting to about seven thousand nine hundred dollars in said confederate treasury notes, and received therefore a certificate from said depository, W. M. Smith, for the sum of seven thousand nine hundred dollars, for which amount registered bonds were afterwards to be issued to this defendant. A true and correct copy of said certificate is hereto attached, marked "Exhibit G," and prayed to be taken as part of this answer, and referred to as often as may be necessary. And this defendant avers that the said confederate treasury notes so deposited as aforesaid, and for which said certificate was given, was the money belonging to said estate and received by this defendant in payment of the indebtedness to said estate in the regular course of administration; that the said investment in four per cent. certificate' was good and valid in law, and authorized by the law of Alabama, as this defendant was advised and
86 believes.

And this defendant, further answering, says that the said final decree rendered on the final settlement of said estate, (see Exhibit "A," pp. 73 to 78,) is not null and void, because said decree is made payable in the bonds of the Confederate States. This defendant says that, by an act of the legislature of Alabama, passed in the month of October, 1864, and by two other acts of said legislature passed in December, 1864, it was declared that whenever any executor administrator, &c., should have deposited treasury notes of the Confederate States belonging to the estate of which he is executor, administrator, &c., for the purpose of obtaining four per cent. bonds of the Confederate States under the said act of the "confederate congress," (Exhibit D,) as it was called, that said certificate of deposit, or the bonds when obtained, shall be distributable in the same way and proportion as the treasury notes themselves would be, and on settlement of the estate for which the certificates or bonds shall be paid to the parties entitled to them, or to the

87 probate judge or register, as the case may require, and credited to the executor, &c., making the settlement as money, and that whenever it should be necessary to effect a division of any bonds or certificates belonging to an estate among the parties interested in the estate to sell such bonds or certificates, the same may be sold by an order of court in the same way as other personal property is sold for a division. Correct copies of said three acts of the said legislature, with the captions thereto, or of such parts of said acts as have application to this case are hereto attached, as "Exhibit H," and prayed to be taken as part of this answer, and referred to as often as may be necessary. And this defendant also refers to "Exhibit C."

And it was further declared by said act of the legislature of Alabama, approved December 3rd, 1864, ("Exhibit H,") that an executor, &c., should only be charge'ble with such assetts as he actually received, whether said assetts consisted of treasury notes of the State of Alabama or of the Confederate States, or any of the securities of this State or of the Confederate States, received by such executor, &c., in
88 pursuance of the laws of the State of Alabama, and that the decree against such executor, &c., shall specify what description of assetts he is chargeable with, and may be satisfied by the payment of the decree with such assets, either to the parties entitled to the same or the judge of probate, as the case may be, and the payment or tender of payment shall be a satisfaction of said decree.

And this defendant avers that the said confederate treasury notes were received by him, and the said four per cent. certificate was received by him in pursuance of the laws of the State of Alabama.

That at the time this defendant made said deposit of said confederate treasury notes with said depository, W. M. Smith, the defendant could not obtain Confederate States bonds in lieu of said confederate treasury notes, because none of the said four per cent. bonds were then issued, but such bonds were to be given and said certificate taken up when such bonds should be issued, as appears from the face of said cer-
89 tificate, (Exh'b't G,) which is here again referred to. And this defendant states that he reported said investment in said four per cent. certificates to the probate court of said county of Marengo at the time he made said final settlement of said estate, and that his action in the premises was then and there approved and confirmed by said probate court. And this defendant states that he deposited said certificate of $7,900.00 with the probate judge of said Marengo County, in said probate court, in compliance with the laws of Alabama in such cases.

And this defendant, further answering, shows to your honorable court that, by the laws of the State of Alabama, as they now stand, this defendant having acted in good faith in the receipt of the said confederate treasury notes as aforesaid, and of the said certificate for bonds, $7,900.00, as aforesaid, would not be liable for their loss, or any loss accruing thereby or thereupon. That a law was passed on the 23rd day of February, 1866, by the legislature of the State of Alabama for the protection and relief of cases like that of this defendant in relation to
90 confederate treasury notes, and in relation to any assetts of estates bonded by executors, administrators, &c., and said law is still in force and unrepealed, and now forms part of the revised code of the State of Alabama, (section 2135 of said code,) a copy of which said section is hereto annexed and marked "Exhibit I," and which is prayed to be taken as part of this answer, and referred to as often as may be necessary, so that if the said final settlement of said estate were to be

made over again in the probate court of Marengo County, this defendant would be entitled to the same decree as was rendered in the premises as set forth in "Exhibit A;" and this defendant is informed and believes he is entitled to the benefit of said law (Revised Code, section 2135,) in this honorable court in this case.

And this defendant, further answering, saith that *if* the complainants were not present either by themselves or attorneys at the contest of said will, in said probate court of Marengo County, in the month of
91 September, 1858, and the original bill in this case was filed by these complainants in this honorable court in the month of November, 1867. A true and correct copy of said law is hereto attached, marked "Exhibit K," and prayed to be taken as part of this answer and referred to as often as may be necessary and proper.

And this defendant further saith that this court, as he is advised, has no jurisdiction of the original bill in this case, so far as the same proposes and prays to retry the said issue "devisavit vel non," in the probate court of Marengo County aforesaid, because the laws of Alabama, then and now of force in that State, only provide that such a case as that set out and asserted in said original bill, as to retrying such issues, can only be retried and examined by bill in chancery in the chancery ocurts of the State of Alabama, and in the chancery district of said State in which a material defendant resides, and, this defendant insists that this honorable court has no jurisdiction to retry the issue as to said will, as prayed by the original bill in this. A true and correct copy of
92 said law is hereto attached, marked, "Exhibit L," and prayed to be taken as part of this answer, and referred to as often as may be necessary.

And this defendant, further answering, saith that, by the laws of Alabama, of force in this state ever since January, 1853, and now of force in said State, it is provided that, when any error of law or of fact has occurred in the settlement of any estate of a decedent to the injury of any party, without any fault or negligence on his part, such party may correct such errors, by bill in chancery, within two years after. The final settlement of the said estate of the said John Horn was had, as appears by the records of the said probate court of Marengo County, in May 1864, (see "Exhibit A," p. 73,) more than three years before the filing of the bill of complaint in this case. And this defendant insists that the complainants are barred of their supposed remedy in this case, even if any error in law or in fact occurred in the settlements of said estate, which this defendant denies. A true and correct copy of said law is hereto attached and marked, "Exhibit M," and prayed to be
93 taken as part of this answer and referred to as often as may be necessary.

And this defendant, further answering, saith that the complainants are in law barred from the relief prayed in their bill in this case, because he saith each and every one of the matters and things stated in said bill and prayed to be reheard and retried in this honorable court, had, before the filing of the bill in this case, been already fully, fairly, and finally heard, tried, and determined, in the said probate court of Marengo County, Alabama. (See "Exhibit A.") And this defendant avers that said probate court of Marengo County had full, complete, and entire jurisdiction of all the matters, issues, and things, on the trial of said will and on the partial settlement of said estate, and on the final settlement of said estate, and also, had jurisdiction of the persons of said complainants, as he insists, and said probate court did adjudicate and determine finally, fairly, and fully, each and every one

of said matters, issues, and things. And defendant insists that
94 said probate court had full and complete jurisdiction of the entire settlements of said estate, and of every matter and thing thereto pertaining; and said estate was fairly, fully, and finally, and completely settled up in said probate court of Marengo County in May, 1864, and this defendant, as executor of said John Horn, dec'd, was finally discharged from his said executorship by said probate court of Marengo County, in the month of May, 1864.

And this defendant shows to this hon. court that the said decrees on the adjudication of the said will, on the partial settlement of said estate, in 1860, and on the final settlement of said estate in 1864, as heretofore stated, and as shown in "Exhibit A," are still existing of full force, unreversed and unappealed from in any manner or form whatever, and are still binding upon the complainants and the other heirs of the said John Horn, deceased, and this defendant shows to this honorable court this further fact, that when said bill of complaint was filed by the said complainants the said decrees of the said probate
95 court of Marengo County were unimpeachable by any laws of force or in existence, of the State of Alabama; that they could not be appealed from the supreme court of said State, because the time had elapsed for taking such appeal, as appears from section 2244, fifth paragraph of said section, of the revised code of Alabama, and section 1888 of the code of Alabama, a copy of which is hereto attached, marked "Exhibit N," and prayed to be taken as part of this answer and referred to as often as may be necessary. That they could not be reviewed by bill in chancery, because the time for that had elapsed. (See "Exhibit M.")

And all the matters, issues, and things enquired of in said bill, and sought to be litigated over again are res judicata, by the laws of Alabama, between the parties, and said decrees constitute the law between the parties and fix their rights forever. And this defendant pleads the said records, as set forth in "Exhibit A," in bar, as res judicata between the said parties, and by way of estoppel of the complain-
96 ants' rights to be reheard on the matters, issues, and things decided in said decree.

And this defendant, further answering, saith that, on the twenty-eight' day of September, 1865, the constitutional convention of the State of Alabama, then in session, authorized, convened, and constituted by Governor Parsons, under the authority of the proclamation of Andrew Johnson, as President of the United States of America, dated June 21st, 1865, said convention passed an ordinance, ratifying and confirming all judgments, orders, and decrees of the several courts of the State of Alabama, rendered between the eleventh day of January, 1861, and the date of said ordinance; and also ratifying all the acts and sales of executors, administrators, &c., had, done, and performed, and made in pursuance of and under color of law, in good faith, within the same period of time, namely, from Jan'y 11th, 1861, to Sept. 28th, 1865; and by said ordinance, any party against whom such judgment has been rendered could have a new trial upon affidavit, &c., provided such
97 application should be made within twelve months from the adoption of said ordinance; and the complainants having failed to make such application within twelve months, as provided, are barred from the new trial under said ordinance. Said ordinance is number 26 of the ordinances of said convention, and a true and correct copy of the first section of said ordinance, (the only sec. which has application to this case,) is hereto attached, marked "Exhibit O," and prayed to be

taken as part of this answer and referred to as often as may be necessary.

And this defendant, further answering, saith that, previous to the death of said John Horn, the said defendant Frances L. Bryan, who was then the wife of Leonidas L. Bryan, had a suit pending between herself and her said husband, in chancery, at Claiborne, Alabama, the bill being filed for the purpose of removing said Leonidas L. Bryan from the trusteeship of her property, and said suit was pending when the partial settlement of the estate of said John Horn was had in 1860,

98 and the decree on said partial settlement was rendered in the manner and form set forth in "Exhibit A," page 62, at the urgent solicitation and request of the said Frances L. Bryan and her attorney, although in fact the slaves set apart to the said Frances L. Bryan were delivered to her in January, 1859, as will appear by her receipt, a copy of which will be found on page 52 of "Exhibit A;" and she held and controlled all of said slaves from January, 1859, up to their emancipation, as her own property. That the said Frances L. Bryan and her husband had lived seperate and apart for several years, and were on very bad and unfriendly terms, and said decree on said partial settlement was so rendered to protect the interest and portion of said Frances L. Bryan in said estate, from the hands and possession of the said Leonidas L. Bryan, and to prevent his getting possession of the same, and to prevent his wasting, spending, and disposing of or injuring the same.

That, in the fall of the year, 1858, the said Frances L. Bryan commenced a suit in chancery, at Camden, Alabama, (Wilcox Co.,)

99 for a divorce from the bonds of matrimony against the said Leonidas L. Bryan, and prosecuted the same until the year 1866, when she dismissed her bill, and they went to live together again. That said first suit about the trusteeship was decided against her. That in both the said chancery suits, this defendant was the next friend of the said Frances L., and he was put to heavy expense, large expenditures, costs, and damages, and much labor, trouble, and responsibility on bonds required, and in carrying on said suits; and that said expenditures, damages, responsibility, labor, and trouble were made, sustained, and paid by this defendant at the urgent instance and request of the said Frances L. Bryan, and paid by this defendant out of his own means, (except a part of the costs,) the said Frances L. Bryan repeatedly assuring this defendant that he should be indemnified and repaid all such sums expended, and for all his trouble and services for her in said suits; and this defendant says that, in justice and truth, he does not owe the said Francis L. Bryan anything, to the best of his belief.

100 And any moneys heretofore offered the said Frances L. Bryan by this defendant, was offered simply to compromise all disputes between them, and not as an admission of any indebtedness by this defendant to said Frances L. Bryan.

And this defendant, further answering, saith that, in January, 1859, he delivered to Elizabeth P. Dumas, (now Elizabeth P. Nabor's,) all the slaves allotted to her from said estate, and took her receipt therefor, a copy of which is on page 52 of "Exhibit A." That the amount decreed to the said Mrs. Dumas on the partial settlement in 1860, was paid in full by this defendant, a copy of her receipt for two thousand and forty eight $\frac{20}{100}$ dollars thereof will be found on page 70 & 71 of "Exhibit A," and the balance was paid by this defendant to the judge of probate of Marengo County for her, (and a receipt taken therefor, which receipt is

now in the possession of this defendant, and ready to be produced, if necessary,) which will appear fully by reference to page 69 of "Exhibit A" That the amount going to said Mrs. Dumas and Frances L.
101 Bryan, and to the complainants on said final settlement was deposited in the probate court of Marengo County in a confederate bond, certificate as required by said decree, and is now on file in said probate court.

And this defendant denies all manner of unlawful combination and confederacy, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint continued material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

S. J. CUMMINGS,
Solicitor for John A. C. Horn.
L. GIBBONS,
Solicitor for John A. C. Horn, one of the Defendants.

102 THE UNITED STATES OF AMERICA,
State of Alabama, Mobile, Alabama, ss:

In chancery in the circuit court of the United States at Mobile, Alabama.

WILLIAM LOCKHART, SARAH LOCKHART, NARcissa Lockhart, complainants,
vs.
JOHN A. C. HORN, AND OTHER', DEFENDANTS.

Before me, N. W. Trimble, clerk of said circuit court of the United States, this day personally appeared John A. C. Horn, one of the defendants in the above stated case, who, being duly sworn by me, maketh oath and saith that the facts, allegations, statements, and charges set forth and stated in the foregeing answer as of his own knowledge are true; and those facts, allegations, statements, and charges set forth and stated in the foregoing answer, on information and belief, he believes to be true.

(S'g) JNO. A. C. HORN.

Sworn to and subscribed before me this 28th July, 1868.
(S'g'd) N. W. TRIMBLE, *Clerk.*

103 "EXHIBIT A."

Term of court.

Proceedings had in the probate court of Marengo County, in the State of Alabama in the matter of the settlement of the estate of John Horn, deceased, before the Hon. James A. Young, judge of said court.

Grant of letters ad colligendum.

ESTATE OF JOHN HORN, DEC'D.

Probate court, special term, April 5th, 1858.

This day came John A. C. Horn, and applied for letters of administration ad colligendum upon the estate of John Horn, deceased, and, it appearing to the court that said John Horn died on or about the day of A. D. 1858, at his place of residence in Marengo County; and it further appearing that there is reason to believe that said John Horn left a will at the time of his death, which has not yet been discovered, and the said John A. C. Horn having entered into bond in the sum of one hundred thousand dollars, with Joseph M. Alexander and N. B. Lessuer as his sureties, and qualified as such temporary administrator: It is therefore ordered by the court that said bonds be approved and recorded, and that said John A. C. Horn be, and is hereby, appointed, administrator to collect and take care of the goods and estate of said deceased, and letters are issued accordingly. And it is further ordered that
104 T. W. Griffith, John G. P. Coleman, D. C. Alexander, J. D. Alexander, and W. L. Davidson be appointed appraisers of said estate.

Order for the sale of crop.

ESTATE OF JOHN HORN, DEC'D. } Regular term, April 12th, A. D. 1858.

On the application of John A. C. Horn, adm., it is ordered that he be authorized to sell the crop of cotton on hand at private sale for cash.

Filing of inventory & app'et.

ESTATE OF JOHN HORN, DEC'D. } Probate court, April 30th, 1858.

This day came John A. C. Horn, adm'r ad colligendum of said estate, and filed in the court an appraisement and inventory of said estate, and also and inventory of the notes and claims in favor of said estate, which are by the court ordered to he filed and recorded.

JA'S A. YOUNG, *Judge, &c.*

Apprais'ment of the personal estate of John Horn, deceased, made on the 29th April, 1858.

1 negro man, named Tom	500
1 negro woman, named Rachel	200
1 negro man, named Charles	600
1 negro man, named Madason	1,500
1 negro woman, named Laura, & her child at the breast, named Buck	1,200
105 1 negro boy, named Charles	400
1 negro woman, named Mourning	800
1 negro boy, name Henry	1,300
1 negro girl, name Amanda	700
1 negro boy, name Jourdan	500

1 negro girl, name Lucy		550
1 negro girl, name Martha		350
1 negro boy child, name President		200
1 negro woman, name Eliza		800
1 negro woman, name Malinda		800
1 negro girl, name Armenta		700
1 negro girl, name Rachel		600
1 negro woman, name Nancy		700
1 negro woman, name Patsy		1,000
1 negro girl, name Nancy		800
1 negro girl, name Courtney		700
1 negro girl, name Judy		600
1 negro girl, name Lewena		600
1 negro woman, name Sarah		1,100
1 negro man, name James		1,400
1 negro boy, name Joseph		1,100
1 negro boy, name Benjamin		1,000
1 negro boy, name John		600
1 negro woman, name Lucinda		1,100
1 negro girl, name Catherine		400
1 negro boy child, name Samuel		200
1 negro man, name Gilford		1,500
1 negro man, name Noah		1,000
106 1 negro man, name Austin		800
1 negro man, name Joshua		1,300
1 negro woman, name Any		300
1 negro man, name Judge		900
1 negro woman, name Hannah		600
1 negro girl, name Alla		650
1 negro girl, name Harriet		600

HORSES AND MULES.

1 mare mule, name Fan		140
1 horse " do. Rock		150
1 mare " do. Kentuck		80
1 horse " do. Jack		25
1 mare " do. Nel		70
1 mare " do. Eliza		150
1 mare " do. Beck		140
1 horse " do. Tom		145
1 " " do. Dave		145
1 mare horse do. Jane		130
1 " " " Kit		150
1 horse " Robin		25
1 " " Charley		60
1 mare mule " Betty		150
1 horse " " Fox		130
1 mare " " Rody		145
1 " " " Pigeon		145
1 horse " " Pom		150
1 mare " " Sal		150
1 horse " " Selem		135

107

CATTLE.

9 milch cows, $20 each	180

1 English bull	100	
11 head dry cattle, $6 each	66	
5 yoke oxen, $50 yok'	250	

HOGS.

48 head hogs, $5 each	240	
76 " stock hogs	150	
23 " shotes, $2.50 each	57	50
4 boilers, $20 each	80	
10 double plows, double-trees, & single-trees	50	
9 single do $2.50 each	22	50
11 shovel-plows, $1.50 "	16	50
12 scooters 1.00	12	00
6 cotton-scrapers, $3.00	18	
22 p'r plow gear, $1.00	22	00
1 lot weeding-hoes	6	20
1 " grubbing "	2	50
1 " chopping-axes	10	
Wedges & frow	3	
1 lot spades & shovels	5	
3 scythes & cradles	3	
1 wagon-stretcher and single-trees	30	
1 ox-wagon, & yokes and chain	50	
1 carry log	20	
1 corn-sheller	20	
1 straw-cutter, valueless.		
1 duck fan	12	
1 wheat-thresher	30	
108 4 new wagon wheels	20	
1 lot iron	12	
1 sett blacksmith tools	50	
1 " carpenter's "	25	
2 cross-cut saws	7	
1 carriage and harness	100	
1 lot bagging and rope	50	
1 " kitchen furniture	10	
1 loom	12	
12 hair-bottom chairs, $3.00 each	36	
1 sofa	20	
1 clock, valueless		
1 lookingglass	1	50
2 spit-boxes	1	50
1 candle-stand	1	00
1 bureau	30	00
1 side-board	30	00
2 beds & steads	30	00
1 stead	12	00
1 lookingglass	1	00
1 trunk	1	00
2 beds & steads	25	00
1 lookingglass	1	00
1 bed and stead	10	
1 sausage-grinder	3	50
1 safe	10	

3 tables & crockery ware		20 00
4 smoothing-irons		2 00
109 1 wardrobe		6
1 double-barrel shot-gun		8
2 guns		150

In pursuance of a commission to us directed by the judge of the probate court of Marengo County, to value the personal estate of John Horn, dec'd, have proceeded to perform their duty as appraisers of said estate. The within is our appraisement.

April 29, 1868.

(S'g) J. D. ALEXANDER.
(") W'M L. DAVIDSON.
(") J. G. P. COLEMAN.
(") T. W. GRIFFITH.

I adopt the annexed list of appraisement as a true inventory of the personal effects of John Horn, dec'd.

(S'g) JOHN A. C. HORN,
Administrator.

Sworn to before me April 30th, 1858.

J. A. YOUNG,
Judge, &c.

Filed April 30th, '58.

J. A. YOUNG, *Judge.*

Inventory of notes.

Inventory of notes, accounts, and money belonging to the estate of John Horn, decea'd.

1 note on C. J. C. Lockhart and Narcissa M. Lockhart, for , due 4th May, 1865. Doubtful	$1,000 00
1 note on W. A. Lockhart and Sarah A. H. Lockhart for , due the 11th May, 1865. Doubtful	1,800 00
110 1 note on Benjamin Sanddeim for , due the 19th October, 1857. Doubtful	$100 00
1 note on Jno. M. Langhorn, & Gooding & Langhorn, for , due 1st Jan'y, 1859. Doubtful	$100 00
1 account on James Simons for , due January 1st, 1849. Doubtful	11 20
1 account on Thomas Merchant, for , due January 1st, 1849. Doubtful	8 20
1 account on W. L. Davidson, due Jan'y 1st, 1850	3 30
Cash	71 00
1 certificate on the Alabama & Mississippi Railroad Company, 10 shares, calling for a share No. 55. Doubtful	100 00
1 certificate on the Alabama & Tennessee R. R. Company, 10 shares, calling for a share No. 1408. Doubtful	25 00
1 note on John H. Nash, due Jan'y 1st, '42. Doubtful	324 16

(S'g.) JOHN A. C. HORN, *Adm'r.*

Sworn to before me April 30th, 1858.

J. A. YOUNG, *Judge.*

Filed April 30th, 1858.

J. A. YOUNG.

Filing of additional inventory.

Probate court, May 27, 1858. Special term.

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn and filed an additional inventory of said estate, which is ordered to be filed and recorded.

JA'S A. YOUNG, *Judge.*

111 *List of slaves in amended apprais'ment.*

Names.	Ages.	Value.
Rose	65	$150
Betty	40	800
Jefferson	20	1,000
Wilerson	19	1,300
Margaret	12	800
Peter	8	500
Catherine	4	300
Dilly	47	600
Martha	15	1,100
Amsi	11	800
Ely	9	550
Robert	7	500
Stephen	4	250
Rose & child Clinton	25	1,200
Amelia	6	500
Manar	5	400
Izra	3	250
Isabella	24	1,000
Georgiana	1	200
Tom	22	1,300
Hannah & child Nicy	26	1,200
Jefferson	6	400
William	5	300
Andy	3	250
Esther	32	900
Green	13	800
Ann	6	500
Oliver	3	250
Frances	1	200
Emily	44	600
Ephraim	25	1,300
Harriet & child George	23	1,200
William	38	1,000
Jerry	28	1,300

In pursuance of an order of the judge of probate of Marengo County, to appraise the personal property of John Horn, dec'd, have proceeded and appraised, as required by the order of said court, May 3rd, 1858.

(S'g) J. D. ALEXANDER.
(") J. G. P. COLEMAN.
(") T. W. GRIFFITH.

STATE OP ALABAMA, *Marengo County:*

I, F. M. Dansby, an acting justice of the peace, hereby certify the' J. D. Alexander, J. G. P. Coleman, T. W. Griffith were duly sworn by me to act as appraisers of the estate of John Horn, dec'd, or so much thereof as should be shown to them by John A. C. Horn, administrator of said estate. Given under my hand this 27th day of May, A. D. 1858.

(S'g) F. M. DANSBY,
Justice of the Peace.

112 I adopt the foregoing list of apprais'ment in addition to the former apprais'ment as an additional inventory of the personal estate of John Horn, dec'd, which was omitted by mistake or misapprehension in the original inventory on file in the probate court of Marengo County.

(S'g) J. A. C. HORN, *Adm'r.*

Sworn to before me May 27th, 1858.

(S'g) J. A. YOUNG.

Filed May 27, '58.

J. A. YOUNG.

Dissent of widow.

ESTATE OF JOHN HORN, DEC'D. } Probate court, June term, 1858.

This day came Rebecca Horn, and filed her dissent in writing to the will, which it is alleged is about to be propounded for probate as the last will and testament of her late husband, the said John Horn, deceased. It is therefore ordered that said dissent be filed and recorded.

J. A. YOUNG, *Judge.*

THE STATE OF ALABAMA, *Marengo County:*

Know all men by these presents that, whereas my late husband, John Horn, deceased, did, in his life-time, to wit, during the month of May, A. D. 1857, make, execute, publish, and declare his last will and
113 testament, wherein among other bequests and provisions, he gave me the use and enjoyment of all the property, real and personal, of which he might die possessed, during my natural life, and constituted me one of his legatees in said will; and whereas said testator, shortly before his death, intended to alter some of the bequests and provisions of said will, and execute a new one in its stead; and whereas I am satisfied that he, said testator, destroyed said will with the intention of dying intestate, or of making a new one materially different: Now, therefore I, Rebecca Horn, widow of said decedent, fearing that an attempt may be made to establish said will, hereby dissent from the same, and renounce all *all* the bequests and provisions therein contained, which may be in my favor, or which may be in any manner construed in my favor, and whether said will be established and probated or not, I hereby dissent from the same and renounce its bequests and provisions, and hereby claim my dower in the lands of the estate of said decedent, and such portion of the personal property thereof as in law I would have been entitled to in case the said John Horn, deceased, had
114 died intestate, which it is my firm and conscientious belief he did.

In testimony of which I hereto set my hand and seal this eight day of June, A. D. 1858.

(S'g) REBECCA HORN.

Executed in presence of—

W'M CRAFT.
W. G. CURRY.

JUNE 8TH, 1858.

Filed for record June 11th, 1858.

J. A. YOUNG, *Judge, &c.*

At a term of the probate court held for Marengo County, in the State of Alabama, at the court-house in Linden, on the 5th day of July, A. D. 1858, Hon. James A. Young, judge of said court, presiding, the following proceedings were had, to wit:

Propounding of will.

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn, and filed his petition in writing and under oath, and avers in said petition that John Horn, deceased, a resident of Marengo County, died about the 11th day March, A. D. 1858, having before that time executed his last will and testament, attested by William B. Modawell and Dewitt C. Alexander, a copy in substance, as he avers, of which will is annexed to and made part of said
115 petition. He further avers in said petition that he is nominated in said will as the executor of said testator, and that since the death of said testator, the said last will and testament has been lost, mislaid, or destroyed, so that said petitioner has not been able to find it, and is unable to produce the original there*for* for probate, and the said petitioner propounds the copy aforesaid for probate as the last will and testament of said John Horn; and, it appearing to the satisfaction of the court that Narcissa M. Lockhart, wife Charles J. C. Lockhart, Sarah C. Lockhart, wife of William Lockhart, and Mary R. McPhail, wife of William McPhail, heirs at law of said John Horn, dec'd, and non-residents of the State of Alabama, and residents of the State of Texas: It is therefore ordered by the court that the petition and probate of said will be set for hearing at the stated term of this court, to be holden on the second Monday and 13th day of September next; and it is further ordered by the court that notice of the time and place of hearing said petition be given by publication for three successive weeks in the Linden Jeffersonian for said non-resident
116 heirs to appear and contest if they think proper; and it is further ordered that citation issue to Rebecca Horn, widow of said deceased, and to Frances L. Bryan and her husband, Leonidas L. Bryan, and Elizabeth P. Dumas, the other heirs at law of said deceased who reside in the State of Alabama.

JA'S A. YOUNG, *Judge.*

Petition for probate of will.

To the Hon. James A. Young, judge of the probate court in and for the county of Marengo, and State of Alabama:

The petition of John A. C. Horn respectfully shows unto your honor,

that, on the 11th day of March, 1858, John Horn, late of said county, then an inhabitant of said county, and leaving his last will and testament attested by William B. Modawell and Dewitt C. Alexander, who signed their names thereto as subscribing witnesses at the request of said John Horn, in his presence and in the presence of each other; that said testator, at the time he executed said last will and testament was of sound and disposing mind, and appointed your petitioner sole executor thereof.

Petitioner further shows that a true and correct copy substan-
117 tially of said last will and testament is hereto attached as "Exhibit A," which he prays may be taken as part of this petition.

Petitioner further shows that since the death of said John Horn, he has made diligent search for said last will and testament, among the papers of said John Horn, deceased, and in all places where it was likely to have been, and dil*l*igent enquiry among the family and friends of said decedent, and is unable to find the same, and that the said last will and testament had been lost, mislaid, or destroyed, so that your petitioner has not been able to find it, and is unable to produce the original thereof for probate.

Your petitioner further shows that the said John Horn left him surviving Rebecca Horn, his widow, a resident of said county of Marengo, Frances L. Bryan, a feme covert, wife of Leonidas Bryan, resident of said county; Elizabeth P. Dumas, resident of the county Shelby, in the State of Alabama. Your petitioner who is a resident of Wilcox County, in said State, and Narcissa Lockhart, a feme covert, wife of Charles J. Lockhart; Sarah A. Lockhart, a feme covert, wife of William
118 Lockhart and Mary R. McPhail, a feme covert, wife of William McPhail all non-residents of the State of Alabama, and residents of the county of Navar'o, in the State of Texas; his only children and next of kin, and he hereby propounds said last will and testament and prays the same may be admitted to probate in your hon. court as the last will and testament of said John Horn, deceased. And your petitioner will ever pray, &c.

JOHN A C. HORN,
By CLARK & TERRELL & J. W. GAROLT.
His att'ys, &c.

THE STATE OF ALABAMA, *Marengo County:*

Before me, Anson Springfeiled, a justice of the peace in and for said county, personally appeared John A. C. Horn, who, being duly sworn, says he has made diligent enquiry among the family and friends of the late John Horn, and dil*l*igent search among the papers of the said decedent, and in all places where the said last will and testament mentioned in the foregoing petition would likely be deposited, for said last will and testament and has been, and is unable to find the same.

(S'g) JOHN A. C. HORN.

119 Sworn to and subscribed before me this 27th day of July, A. D. 1858.

A. SPRINGFEILD, *J. P.*

"EXHIBIT A."

I, John Horn, of the county of Marengo and State of Alabama, being of sound mind and disposing memory, and knowing the uncertainty of life, and certainty of death, do make and publish the following as

my last will and testament, to wit: I give and bequeath to my beloved wife, Rebecca Horn, all my property, both real and personal, of whatever description that I may be seized and possessed of, at the time of my death, to have and to hold the same during her natural life. I give and bequeath to my son John A. C. Horn, my home tract of land, containing 720 acres, more or less, together with all the improvements thereon, to have the same, absolutely, at the death of his mother.

I give and bequeath to my daughter Frances L. Bryan, my negro girl named Alla, to have and to hold the same to her seperate use at the death of her mother.

I give and bequeath to my daughters, Narcissa M. Lockhart, Sarah A. Lockhart, E. P. Dumas, Mary R. McPhail, & Frances S. Bryan
120 the following land which is detached from my home-place, containing 240 acres, more or less, to be sold by my executor on such terms as he may think best, and the proceed' divided equally among my said daughters. At the death of my beloved wife I will and bequeath all the balance of my prorerty to all my children, to wit: John A. C. Horn, Sarah A. Lockhart, Narciss' M. Lockhart, Mary R. McPhail, E. P. Dumas, and Frances L. Bryan, to be divided equally between them. If my daughter E. P. Dumas should die and leave no child or children surviving her, it is my will that her portion of my property shall go back to her brother and sisters, and her present or any future husband shall have no part of it. It is my will that in the final distribution of my estate that the advances that I heretofore made to my children should be charged up to them in said distribution, and I hereby charge to my children, as advances heretofore made, the following sums to wit: John A. C. Horn, $1,650; Frances L. Bryan, $8,250.00; Narcissa M. Lockhart, $3,400.00; E. P. Dumas, $8,617.00; Sarah A. Lockhart, $4,400.00; Mary R. McPhail, 6.300.00. I hereby appoint my son, Jno. A. C. Horn, executor to this my last will and testament.

(Signed) JOHN HORN.

Witnesses—
W. B. MODAWELL.
D. C. ALEXANDER.

121 Filed July 5th, 1858.
(S'g.) J. A. YOUNG.

Notice to produce will.

JOHN A. C. HORN
vs.
ELIZABETH P. DUMAS ET ALS.

Presiding in the probate court of Marengo County to Mrs. Rebecca Horn and Frances Bryan:

You and each of you are hereby notified to have present and produce on the trial of this cause, the last will and testament of John Horn, late of Marengo County, deceased, written by William B. Modawell, esq., in the month of May, A. D. 1857, signed by said John Horn and attested by said Modawell and Dewit C. Alexander as subscribing witnesses theerto.

Sept. 8th, 1868.

JOHN A. C. HORN.
By CLARK & TERRELL & BROOKS & GAROLT,
His att'ys, &c.

Executed Sept. the 10th, 1858, on Rebecca Horn, & Frances Bryan.
E. T. WATTINGTON, *Sh'f.*
By S. HYLTON, D. S.

Notice to E. P. Dumas.

Probate court, July term, A. D. 1858.

THE STATE OF ALABAMA, *Marengo County:*
To any sheriff of the State of Alabama, greeting:

You are hereby commanded without delay to cite Elizabeth P. Dumas, if to be found in your county, to be and appear before the honor-
122 able judge of the probate court, at a court to be holden in Linden, for the county of Marengo, on the 2d Monday of September, 1858, and show cause, if any she have, why an instrument propounded by John A. C. Horn, as the last will of John Horn, late of Marengo County, dec'd, should not be admitted to probate. Herein fail not. Have you then and there this citation with your endorsement thereon.

Witness James A. Young, clerk of said court, at office, this 10th day of August, 1858, and in the 83rd year of the independence of the United States.

JA'S A. YOUNG, *Clerk.*

Issued 10th day of August, 1858.

Received in sheriff's office 17th day of August, A. D. 1858. Executed 17th Aug't, 1858.

H. J. SAWYERS, *Sh'ff.*
P'r F. C. BRASHER, *D. S.*

Notice to Mrs. Bryan & Mrs. Horn.

Probate court.

STATE OF ALABAMA, *Marengo County:*
To any sheriff of the State of Alabama, greeting:

You are hereby commanded, without delay, to cite Frances L. Bryan, daughter of John Horn, dec'd, and Rebecca Horn, widow of said dec'd, if to be found in your county, to be and appear before the hon. judge of the probate court, at a court to be holden in Linden, for the county
123 of Marengo, on the 2 Monday of September, 1858, and show cause, if any the' have, why an instrument, propounded for probate as the last will of said John Horn, deceased, should not be admitted to record as such. Herein fail not, and have you then and there this citation, with your endorsement thereon.

Witness, Ja's A. Young, clerk of said court, at office, this 10th day of Aug't, 1858, and in the 83rd year of the independence of the United States.

JAMES A. YOUNG, *Clerk.*

Issued 10th day of Aug't, 1858.

Received in sheriff's office. Executed August 17th, 1858, on Rebecca Horn. Executed Aug't 27th, 1858, on Frances Bryan.
E. T. WALTINGTON, *Sh'ff.*
By S. HYLTON, *D. S.*

Notice to F. L. Bryan & L. L. Bryan.

Probate court, July term, 1858.

STATE OF ALABAMA, *Marengo County:*

To any sheriff of the State of Alabama, greeting:

You are hereby commanded, without delay, to cite Leonidas L. Bryan and Frances L. Bryan, if to be found in your county, to be and appear before the honorable judge of the probate court, at a court to be holden in Linden, for the county of Marengo, on the 2d Monday of Sep-
124 tember, 1858, and show cause, if any they have, why an instrument, propounded as the last will of John Horn, deceased, should not be admitted to probate. Herein fail not, and have you then and there this citation, with your endorsement thereon.

Witness, James A Young, clerk of said court, at office, this 10th day of August, 1868, and in the 83rd year of the independence of the United States.

JA'S A. YOUNG, *Clerk.*

Filed 10th day of Aug't, 1858. Received in sheriff's office 18th day of Aug't, A. D. 1858. Executed August 19th, 1858.

D. A. W. PATTERSON, *Sh'ff.*

Opening testimony.

Probate court, held 2d Monday and 13th day of September, A. D. 1858.

John Horn, dec'd.

It is ordered by the court that the deposition taken in this case, in the matter of the probate of the last will of said John Horn, be opened subject to exception by the parties.

Probate of will.

ESTATE OF JOHN HORN, DEC'D, IN THE MATTER of the probate of the will of said John Horn.

This day came Jno. A. C. Horn, the proponent, by his att'ys, and likewise came Frances R. Bryan and Elizabeth P. Dumas, in
125 their proper persons, and also came William McPhail and wife, Mary R. McPhail, by their attorneys, and it appearing to the satisfaction of the court, that all the next of kin of said John Horn, deceased, residing in the State of Alabama, have had ten days' notice of the time and place of taking the probate of the instrument in writing, propounded by said John A. Horn as the last will of said John Horn, deceased, and that publication has been made for three successive weeks in the Linden Jeffersonian newspaper, published at Linden, in the county of Marengo, for the non-resident heirs at law of said John Horn, deceased, to appear and contest said probate, if they thought proper, the probate of said will was by the court *was* heard, and at the hearing thereof a motion was made by the proponent to suppress the deposition of Mrs. Rebecca Horn, the widow of the testator, taken by and on behalf of the contestants, which motion, after

argument of the counsel, was by the court sustained and said deposition suppressed. And therefore came a jury of good and lawful men, viz,
Z. O. Riddle and eleven others, who, being chosen, tried, and
126 sworn, well and truly to try the issues made up under the direction of the court and joined by the parties, upon their oath say that they find the issues in favor of the proponent. They find that the said John Horn, deceased, duly made and published a will in his lifetime, and that the following is a substantial copy thereof, to wit:

I, John Horn, of the county of Marengo and State of Alabama, being of sound mind and disposing memory, and knowing the uncertainty of life and the certainty of death, do make and publish the following as his last will and testament, to wit:

I give and bequeath to my beloved wife, Rebecca Horn, all my property, both real and personal, of whatever description, that I may be seized and possessed of at the time of my death, to have and to hold the same during her natural life.

I give and bequeath to my son, John A. C. Horn, my home tract of land, containing 720 acres, more or less, together with all the improvements thereon, to have the same absolutely at the death of his mother.

I give and bequeath to my daughter Frances L. Bryan, my ne-
127 gro girl named Alla, to have and to hold the same to her seperate use at the death of her mother.

I give and bequeath to my daughters Narcissa M. Lockhart, Sarah A. Lockhart, E. P. Dumas, Mary R. McPhail, and Frances L. Bryan, the following land, which is detached from my home-place, containing 240 acres, more or less, to be sold by my executor, on such terms as he may think best, and the proceeds divided equally among my said daughters.

At the death of my beloved wife, I will and bequeath all the balance of my property to all my children, to wit: John A. C. Horn, Sarah A. Lockhart, Narcissa M. Lockhart, Mary R. McPhail, E. P. Dumas, and Frances L. Bryan, to be divided equally between them.

If my daughter E. P. Dumas should die and leave no child or children surviving her, it is my will that her portion of my property shall go back to her brother and sisters, and her present or any future husband shall have no part of it.

It is my will that, on the final distribution of my estate, that the advances that I have heretofore made to my children shall be charged up to them in said distribution, and I hereby charge to my children,
128 as advances heretofore made, the following sums, to wit: John A. C. Horn, $1,650; Narcissa M. Lockhart; $3,400.00; Sarah A. Lockhart, $4,400.00; Mary R. McPhail, $6,300.00; Frances L. Bryan, $8,250.00; E. P. Dumas, $8,617.00. I hereby appoint my son, John A. C. Horn, executor to this my last will and testament.

(Signed) JOHN HORN.

Witnesses—
W. B. MODAWELL.
D. C. ALEXANDER.

They further find that the said will has disappeared and been lost or destroyed without the knowledge or consent of the testator, and that it has never been revoked by him; that he was of sound and disposing mind, and that the said will is in truth the last will and testament of the said John Horn. It is, therefore, considered and ordered by the court that the said will, as above set out and so found as aforesaid by

the jury, be established and recorded as the last will and testament of said John Horn, deceased, until the original will, or a more authentic copy, can be brought in. And it is further ordered that letters testamentary be granted to John A. C. Horn upon said will.

(S'g) JA'S A. YOUNG, *Judge.*

129 *Order to sell crop of cotton & wheat.*

ESTATE OF JOHN HORN, DEC'D. } September term, 1858.

On the application of John A. C. Horn, adm'r ad colligendum, it is ordered that he be authorized to sell the crop of cotton and wheat on hand at private sale for cash.

(S'g) JA'S A. YOUNG, *Judge, &c.*

Certificate of appeal.

At a stated term of the probate court held for Marengo County, in the State of Alabama, on the 2d Monday, and 11th day of October, A. D. 1858, the Hon. James A. Young, judge of said court presiding, the following orders were made, and proceedings were had, to wit:

JOHN A. C. HORN *vs.* REBECCA P. DUMAS.

I, James A. Young, judge of probate of Marengo County, certify that the defendants in this cause in the matter of the probate of the will of John Horn, deceased, have this day, by their attorney Robert D. Hart, esq., appealed from the judgment of this court admitting said will to record, and that the said Robert D. Hart has become their security for the costs of said appeal.

Given under my hand the 11th day of November, A. D. 1858.

(S'g) JAMES A. YOUNG, *Judge, &c.*

130 *Dissent of widow.*

Probate court, special term, held Oct'r 28th, 1858.

ESTATE OF JOHN HORN, DEC'D.

This day came Rebecca Horn, widow of John Horn, deceased, and filed in court her dissent to the will of said John Horn heretofore admitted to probate in this court, which dissent in writing is ordered to be filed and recorded.

(S'g) JA'S A. YOUNG, *Judge.*

STATE OF ALABAMA, *Marengo County:*

Be it known that, whereas John Horn, deceased, late of the said county and State, died on or about the 11th day of March, A. D. 1858, seized and possessed of real and personal property in said county; and whereas the last will and testament of said John Horn, deceased, was duly admitted to probate by the honorable the probate court of Marengo County, in said State, at the September term, A. D. 1858, of said court,

(it being the regular term of said court for the month of September, A. D. 1858;) and whereas, by the provisions of said will, the undersigned, Rebecca Horn, who was the wife, and is now the widow of said John Horn, deceased, was entitled to take certain benefits and interests under said will: Now know ye, that I, the said Rebecca Horn, widow of
131 said John Horn, deceased, do here now, by virtue of the right in me vested by the laws of said State, come and file this my written consent to each and all the provisions of said will aforesaid, and now here relinquishing all right, claim, or interest, or benefit under said will or any of its said provisions, here come and elect to take only such interest or share in the estate of said deceased, to which, as the widow of said deceased, the laws of said State may entitle me, independently of the provisions of said last will and testament of my deceased husband, John Horn, aforesaid.

Given under my hand and seal this the 22d day of October, A. D. 1858.

(S'g) REBECCA her + mark. HORN. [SEAL.]

Attest: J. M. ALEXANDER.

Filed in office and recorded 28th day of Oct., A. D. 1858.

(S'g) J. A. YOUNG.

Order to hear petition for dower.

Probate court, special term, held November 4th, 1858.

ESTATE OF JOHN HORN, DEC'D.

This day came Rebecca Horn, widow of John Horn, deceased, and filed in court her petition for dower in the real estate of which said John Horn died seized. It is, therefore, ordered that said peti-
132 tion be set for hearing on the first Monday of December next, and that notice thereof be given by publication for three successive weeks in the Linden Jeffersonian newspaper, that the non-resident heirs at law named in said petition may appear and contest if they think proper, and that citations issue to the heirs residing in the State of Alabama.

JAMES A. YOUNG, *Judge.*

Petition for dower.

To the Hon'l James A. Young, judge of the probate court for Marengo County, Alabama:

Your petitioner, Rebecca Horn, a resident of said county and State, respectfully sheweth unto your honor:

That John Horn, deceased, late of said county, departed this life on or about the 11th day of March, A. D. 1858; that an instrument purporting to be the last will and testament of said John Horn, deceased, was by your honorable court admitted to probate at the September term thereof, A. D. 1858.

That your petitioner, the said Rebecca, was the wife of said deceased, to whom he was lawfully married, and who is now the widow of the said deceased.

That your petitioner has filed in your honorable court, her writ-
133 ten dissent to the said will of her said deceased husband.

That said deceased left him surviving, your petitioner, his widow as aforesaid, and the following children who are his only heirs at law, to wit: Frances L. Bryan of full age and sane mind, who resides in the county and State aforesaid, who is the wife of one Leo. L. Bryan, who resides in the county of Wilcox, in said State; John A. C. Horn of full age and sane mind, who resides in the county of Wilcox, and said State, and who is the executor named in said last will and testament; Elizabeth P. Dumas, who is of full age and sane mind, who resides in the county of Shelby, in said State, and Mary R. McPhail, wife of William McPhail, Narcissa M. Lockhart, the wife of Charles J. C. Lockhart, and Sarah A. Lockhart, the wife of William A. Lockhart, all of whom are of sane mind and of full age, and reside in the State of Texas, and are non-residents of the State of Alabama. That said deceased was seized and possessed in fee during his said marriage with the said Rebecca, your petitioner, and at the time of his death of the following described lots, parcels, and pieces, and tracts of land, to wit. The east half of
134 N. E ¼, sec. 36, T. 17, R. 5 east, 80 acres; E. ½ of N. W. ¼, sec. 36, T. 17, R. 5 (E.) east, 80 acres; the S. ½ of S. E. ¼, sec. 26, T. 17, R. 5 east, 80 acres; the N. ½ of N. E. ¼, sec. 3, T. 16, R. 5 east, 80 acres; the N. W. ¼ of S. E. ¼, sec. 3, T. 16, R. 5 east, 40 acres; the N. E. ¼ of S. W. ¼, sec. 3, T. 16, R. 5 east, 40 acres; the N. ½ of S. W. ¼, sec. 36, T. 17, R. 5 east, 80 acres; the W. ½ of N. W. ¼, sec. 36, T. 17, R. 5 east, 80 acres; the N. E. ¼ of section 35, T. 17, R. 5 ea't, 160 acres; the west ½ of N. E. ¼, sec. 36, T. 17, R. 5 east, 80 acres; the east ½ of S. E. ¼, sect. 34, T. 17, R. 5 east, 80 acres, containing 960 acres, more or less; that said lands are lying and situate in the county of Marengo aforesaid, in the State aforesaid. And your petitioner further sheweth unto your honor that she never relinquished or released in any manner whatever her right to dower in any part of said lands either before, during, or since her marriage with John Horn, deceased, and alleges that she is entitled to be endowed of a life estate in one-third of said lands, which dower interest your petitioner avers can be justly assigned to her by metes and bounds, and your petitioner therefore prays your honor that her dower interest in said lands may be
sett off and assigned to her by metes and bounds aforesaid; and to
135 the end that the same may be in *in* all things accomplished in accordance with the law in such cases made and provided, your petitioner further prays your honor to make such orders and decrees, and such process issue, and such other proceedings have, as may seem fit and proper in the premises. And as in duty bound will ever pray, &c., &c.

REBECCA HORN,
By her attorneys, WEBB AND HORT.

THE STATE OF ALABAMA, *Marengo County:*

Personally came before me, W. H. Gamble, an acting justice of the peace in and for said county, Rebecca Horn, who, being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, deposeth and saith that the statements contained in the above and foregoing petition as contained in the pages number 1, 2, & 3, (which said petition was read over to her by me,) are all true.

(S'g) REBECCA her × mark HORN.

Sworn to and subscribed before me this the 8th day of November, A. D. 1858.

W. H. GAMBLE,
Justice Peace in and for Marengo County.

Filed in my office this 4th day Nov'r, A. D. 1858.
(S'g) J. A. YOUNG,
Judge, &c.

136 *Order to sell perishable property.*

Probate court stated term, held the 2d Monday and 8th day of November, A. D. 1858, Judge Young, presiding.

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn, executor, and filed his petition for an order to sell the perishable property of said estate, and it appearing that a sale of said perishable property is necessary to make a division among the legatees according to the provisions of the will of said testator, it is ordered and decreed that said petition be granted, and that said executor be authorized to sell said property at auction on the premises on twelve months' credit, after advertising as the law directs.
(S'g) J. A. YOUNG, *Judge.*

Grant of letters testamentary.

Probate court, Marengo County, held the 4th Monday, and 22d day of November, A. D. 1858, Judge Young, presiding.

Approved Nov. 22d, A. D. 1858.

J. B. YOUNG.

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn, and entered into bond in one hundred thousand dollars, with N. B. Lessuer and Jno. D. Alexander as his sureties, and qualified as executor of the last will of said John
137 Horn, deceased. It is therefore ordered by the court that said bond be approved and recorded, and that letters testamentary on said last will issue to said John A. C. Horn accordingly.

Bond of executors.

THE STATE OF ALABAMA, *Marengo County:*

Know all men by these presents that we, John A. C. Horn, N. B. Lessuer, and J. D. Alexander, are held and firmly bound unto J. A. Young, esq., judge of probate for the county of Marengo, and to his successors in office in the sum of one hundred thousand dollars, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 22d day of November, in the year one thousand eight hundred and fifty-eight.

The condition of the above obligation is such that whereas the above bound John A. C. Horn has this day been duly appointed executor of the

last will and testament of John Horn, deceased: late of Marengo County, *deceased*:

Now, if the said John A. C. Horn shall, and do well and truly perform all the duties which are, or may be by law required of him
138 as such executor, then the above obligation to be void; otherwise to remain in full force.

(S'g)	JOHN A. C. HORN.	[L. S.]
(")	N. B. LESSUER.	[L. S.]
(")	J. D. ALEXANDER.	[L. S.]

Dismissal of appeal.

Probate court, held the 22d November, 1858.

ESTATE OF JOHN HORN, DEC'D.

This day came Robert D. Hort, esq., attorney for the contestants in the matter of the probate of the will of said John Horn, deceased, and withdraws his written obligation as security for the costs of appeal in this cause and dismisses said appeal. It is therefore considered by the court that said appeal be dismissed.

J. A. YOUNG, *Judge, &c.*

Order of sale of personal estate.

ESTATE OF JOHN HORN, DEC'D. } November 23rd, 1858.

This day came John A. C. Horn, executor of said deceased, and filed his petition for an order to sell the perishable property of said estate for the purpose of making distribution according to the will of said deceased. It is therefore ordered that said petition be granted, and that said executor be authorized to sell said perishable property at auction, on the premises of said deceased, on twelve months' credit, for,
139 all sums over five dollars, and for cash for all sums under five dollars.

JA'S A. YOUNG, *Judge.*

Petition for sale of per. property.

To the Hon. James A. Young, judge of the court of probate of Marengo County:

The petition of John A. C. Horn, executor of the last will and testament of John Horn, deceased, respectfully shows unto your honor that said testator died in Marengo County, seized and possessed of the following perishable property, to wit: One certificate of stock, No. 55, on the Alabama and Mississippi River Railroad Company, calling for ten shares of $100.00 each; one certificate of stock on the Alabama and Tennessee River Railroad Company, No. 1408, calling for ten shares of $25.00 each; 5 head of horses; 15 head of mules; 4 yoke of oxen; 1 English bull; about 25 head stock cattle; about 80 head pork hogs; 1 lot stock hogs; about 6,000 bushel' corn; one lot fodder; various farming tools; a lot of household and kitchen furniture; 1 sett of blacksmith and carpenter's tools; one wheat-thrasher & fan; one family

carriage; two road wagons; 2 grist and 1 mill, &c. Now in consideration that the will of said testator has not conferred or devised the
140 power of petitioner to sell said property for distribution among the heirs, your petitioner prays that an order be made by your honorable court to sell said property for distribution among the following heirs of said testator, viz: Narcissa Lockhart, wife of C. J. C. Lockhart; Sarah Lockhart, wife of William Lockhart; Mary R. McPhail, wife of William McPhail, all residents of the State of Texas; Priscilla Dumas, Frances L. Bryan, wife of L. L. Bryan, and your petitioner, and Rebecca Horn, widow of the said testator, residents of the State of Alabama. All of said heirs are over the age of 21 years. Your petitioner alleges and avers that the said perishable property cannot be fairly and equitably divided among said legatees without a sale of the same, and therefore prays that an order be granted by your honor.

(S'd) JOHN A. C. HORN *Executor.*

Sworn to before me, Nov. 23d, 1858.

J. A. YOUNG.

Filed Nov. 23, '58.

J. A. YOUNG.

Order to hear petition to divide slaves.

Probate court, special term, held the 30th day of Nov'r, A. D. 1858.

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn, executor of the last will of
141 said deceased, and filed his petition for an order to divide the slaves of his testator among the legatees, according to the provisions of the will of said testator. It is therefore ordered that said petition be set for hearing on the 2d Monday in December next.

(S'g.) JA'S A. YOUNG, *Judge.*

Petition to divide slaves.

To the Hon. James A. Young, judge of the court of probate of Marengo County:

The petition of Jno. A. C. Horn, executor of the last will and testament of Jno. Horn, deceased, respectfully shows unto your honor that the said John Horn died testate, in Marengo County, seized and possessed of a large number of slaves, the number and names which are exhibited to your honor by the same being attached hereto, and marked Exhibit No. 1, which petitioner prays may be taken as a part of this petition. Your petitioner further shows unto your honor that Rebecca Horn, the widow of said testator, has dissented from the will of said John Horn, in manner an' form, as is prescribed and provided by the statute laws of Alabama; and your petitioner shows unto your honor that the said testator left, surviving him, the following heirs, to wit: Rebecca Horn, the widow of said testator, your pe-
142 titioner, E. Priscilla Dumas, Frances L. Bryan, wife of Leonidas L. Bryan, all residents of the State of Alabama; and Sarah Lockhart, wife of William Lockhart, Narcissa Lockhart, wife of Charles J. C. Lockhart, Mary R. McPhail, wife of William McPhail, residents

of the State of Texas. All of said heirs are over the age of twenty-one years. Your petitioner in order to carry out the last will and testament of said testator, prays that your honor will make an order to divide said slaves among said legatees according to the terms and provisions of said will, and appoint suitable commissioners to make said distribution.

(S'g) JOHN A. C. HORN, *Executor.*

Sworn to before me, Nov. 22d, 1858.

J. A. YOUNG.

Filed Nov. 22, '58.

J. A. YOUNG.

At a stated term of the probate court, held for Marengo County, in the State of Alabama, on the 2d Monday and 13th day of December, A. D. 1858, the Hon. James A. Young, judge, presiding, the following proceedings were had and order made, to wit:

Order for division of slaves.

ESTATE OF JOHN HORN, DEC'D.

This day came on to be heard the petition of John A. C. Horn, executor, for an order of division of the slaves of his testator,
143 among the legatees and distributors as therein set forth, and there being no objection to the same, it is therefore ordered by the court that said petition be granted, and that Jno. D. Alexander, Jno. G. P. Coleman, Lewis Anderson, W. M. Booker, and Samuel A. Fitts, be appointed commissioners to divide said slaves, and to sett off to Mrs. Rebecca Horn, one-fifth thereof in value, and to divide the remainder of said slaves among the legatees, taking into account the amount advanced by said testator in his lifetime, as shown by his will as follows, to wit: To sett off to Jno. A. C. Horn, one-sixth, including therein the sum of $1,650.00 advanced to him as aforesaid; to Narcissa M. Lockhart, one-sixth, including therein $3,400.00, advanced to her; to Sarah A. Lockhart, one-sixth, including therein $4,400.00, advanced to her; to Mary R. McPhail, one-sixth, including therein $6,300.00 advanced to her; to Frances L. Bryan, one-sixth, including therein $8,250 advanced to her and to Elizabeth P. Dumas, one-sixth, including therein $8,617.00, advanced to her. And it is further ordered that said commissioners make their report of said division, at the January term of this court next.

(S'g.) J. A. YOUNG, *Judge.*

144 *Dismissal of petition for dower.*

ESTATE OF JOHN HORN, DEC'D. } December term, 1858.

In this case, upon the motion of Rebecca Horn, by her attorney, it is ordered that the petition of said Rebecca for dower in the real estate of which said John Horn died seized and possessed, be dismissed at the costs of said Rebecca.

(S'g) JA'S A. YOUNG, *Judge, &c.*

Filing of account for partial settlement.

At a stated term of the probate court, begun and held for the county of Marengo, on the 2d Monday, and 11th day of July, A. D. 1859, the Hon'l James A. Young, judge of said court, presiding, the following proceedings were had, and orders made, to wit:

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn, executor, and filed his account and vouchers for partial settlement of said estate, which is ordered to be set for hearing on the 2d Monday in September next, and to be advertised for three successive weeks in the Linden Jeffersonian.

Order of continuance.

Probate court, September term, 1859.

At the stated term to be holden on the 2d Monday in September,
145 A. D. 1859, all causes standing for trial or hearing stand continued because of the absence of the Hon. James A. Young, presiding judge of the probate court of Marengo County.

Filing of sale-bill.

Probate court, September 26, 1859.

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn, executor of said John Horn, dec'd, and filed in court his report of sales of perishable property of said testator; and it appearing that said sales were fairly made, for reasonable prices, after advertising as the law directs, it is ordered that said sales be confirmed, and said report recorded.

JA'S A. YOUNG, *Judge.*

Sale bill.

Account of sales of personal chattels of estate of Jno. Horn, dec'd, sold by John A. C. Horn, as executor, on the 30th December, 1858, on a credit of twelve months.

Rebecca Horn:

1 mule	$190	00
1 do	181	
1 do	201	
1 do	182	50
1 cow	20	
1 cow & calf	16	
146 1 cow & calf	14	
1 " " "	20	
1 heifer	7	00
1 lot spades & shovels	1	00
1 cotton gin	5	00
6 hogs	96	

4 do	63		
5 do	83		
1 lot stock hogs	29		
1 carriage	50 00		
			1,158 50
J. D. Alexander:			
1 mule	$200 00		
			200 00
Jno. A. C. Horn:			
1 mule, 180.00; 1 do 192.00; 1 do 175.00	547 00		
1 do 172.00; 1 do 201.00; 1 do 175.00	548 00		
1 mare, 125.00; 1 English bull, 70.00	195 00		1,290 00
	1,290 00		2,648 50
Jno. A. C. Horn:			
1 yearling, 8.00; 1 do 8.00	16 00		
1 cow, 19.00; 1 do 13.00	32 00		
1 cow & yearling, 10.00; 1 heifer, 3.50; 1 cow 12.00	25 50		
1 p'r yearlings, 7.00; 1 steer, 12.00	19 00		
1 heifer	3 50		
1 heifer & steer	5 00		
1 p'r steers	32 00		
1 yoke steers	65 00		
1 do do	50 00		
3 shovel-plows	3 50		
147 3 shovel-plows	3 50		
4 plows	3 00		
2 do	4 25		
2 do	4 50		
3 do	6 62		
3 Cary plows	3 50		
3 do do	3 50		
2 do do	2 50		
3 do do	6		
2 do do	6		
Sundry do	1		
3 grubbing-hoes	2 25		
1 p'r cotton scrapers	2 00		
1 do do	2 00		
1 do do	2 00		
1 lot cotton-pullers	2 50		
1 " sundries	3 25		
1 " blacksmith tools	41 00		
1 gin band	50 00		
3 p'r geers	4 00		
6 do	1 63		
2 bars iron, 175 lbs., @ 4 c	7 00		
1 log-chain	3 50		
1 waggon	80 00		
1 do	43 00		
1 corn-sheller	2 50		
1 wheat fan	27 00		
1 thrasher	5 00		

148	1 cutting-knife	3 25		
	5 hogs	61		
	5 do.	40		
	1 lot stock hogs	31		
	1 do.	21		
	1 do.	21		
	1 do.	24		
	4 kettles	56		
	1,450 bushels corn, @ 60	870		
	1 steer	31		
	1 do.	16		
	13,270 lbs. fodder, @ 93⅜ c	114 93		
	1 lot carpenter tools	20 00		
	4 cross-cut saws	4 00		
	2 axes	1 50		
	1 lot cradles	10 00		
	6 plow-gears	4 25		
	2,590 bushels cotton seed 4⅛ c	106 83		
				1,603 76
W. Woolf:				
	1 mule	82 00		
	1 set *wag*on wheels	18 50		
	1 carry-log	30 00		
				130 50
G. Buchanon:				
	1 mule	55 00		
	1 do.	151		
	1 horse	27		
	1 do.	28		
	3 plows	1 63		
149	3 plows	4 50		
	2 do.	5		
	3 do.	5 50		
	3 do.	2 00		
	3 double-trees & single-trees	7 12		
	6 hoes	1 13		
	3 axes	1 13		
	6 hoes	1 62		
	2 shovels, 25 c.; 3 p'r gears, $4.12; 3.00, $4	8 37		
	1 balance, 1.87; 5 hogs, $30.00	31 87		
J. W. Harrington:				
	1 mare	153		
A. J. McConnell:				
	1 cow and calf	11 00		
W. W. Horton:				
	1 cow, $20.00; 1 p'r steers, 39.00	59		
	1 p'r steers, 64; 5 cotton-openers, 8.13	73 13		
S. A. Fitts:				
	3 double-trees and single-trees	6 00		
	6 hoes, 62 c.; 6 do., 88 c.; 6 do., 75	2 25		
	8 do. 1.25; 3 axes, 2.25	3 50		
	4 axes, 2.37; 1 p'r steers, 33	35 37		

Jno. L. Murphy:		
	1 lot lumber	6 00
	5,000 lbs. fodder, 95 c. p'r C.	47 50
Samuel Orr:		
	6 hogs	108
	5 do.	85 00
150	5 hogs	33 00
	1,528 bushels corn, @ 58⅓	891 33
	11,278 lbs. fodder, @ 96	108 16
Levi Borden:		
	5 hogs	65 00
W'm Gamble:		
	5 hogs	67 00
Jno. M. Neely:		
	5 hogs	57 00
W. A. Lockhart:		
	5 hogs	40 00

Report of sale of land.

Pursuant to power invested in me by the last will and testament of Jno. Horn, dec'd, I sold, on the 8th January, 1859, at the residence of the said Jno. Horn, the following land, to wit: E. ½ of S. E. ¼ of section 34, T. 17, R. 5 east; the west ½ of N. E. ¼ of section 3, N. W. ¼ of S. E. ¼, sec. 3, and N. E. ¼ of S. W. ¼, section 3, T. 16. R. 5, subject to the dower of Rebecca Horn, widow of the late Jno. Horn, which was laid off, as per agreement between her and the heirs, which said dower is the E. ½ of S. E. ¼, sect 34, T. 17, R. 5 east; the highest and best bidders, at said sale, for said lands, were as follows: To J. B. Craighead, the W. ½ of N. E. ¼, N. W. ¼ of S. E. ¼, N. E. ¼ of S. W. ¼, section 3, T. 16, R. 5, containing 160 acres, at 65 per acre; to Jno. A. C. Horn, E. ½ of
151 S. E. ¼, sect. 34, T. 17, R. 5, containing 80 acres, at $60.25 p'r acre. Said lands were sold on a credit of twelve months.

STATE OF ALABAMA, *Marengo County:*

Before me, A. E. Moody, an acting justice of the peace for said county, personally appeared John A. C. Horn, who, after being duly sworn, says that the within sale of perishable property of the estate of Jno. Horn, dec'd, is correct.

JNO. A. C. HORN.

Sworn to and subscribed before me this 12th September, A. D. 1859.
(S'g') J. A. YOUNG, *Judge.*

Filed Sept. 26th, 1860.

At a stated term of the probate court of Marengo County, in the State of Alabama, held the 2d Monday, and 10th day of October, 1859, the Hon. James A. Young, judge of said court, presiding, the following proceedings were had, and orders made, viz:

ESTATE OF JOHN HORN.

Settlement continued to 2d Monday in December next.

Filing of report of division of slaves.

ESTATE OF JOHN HORN, DEC'D. } October term, 1859.

This day came John A. C. Horn, executor, and filed in court a report of the division of slaves, belonging to said estate by the commissioners appointed by this court, which report is by the court ordered to be confirmed & recorded.

152 *Commission to divide slaves.*

Probate court Marengo County.

ESTATE OF JOHN HORN, DEC'D. } December term, 1858.

To Jno. D. Alexander, Lewis Anderson, and Samuel Fitts, esq., Wm. L. Davidson, D. C. Alexander:

By the order of the probate court of Marengo County you are appointed commissioners to value and divide the following named slaves, belonging to the estate of Jno. Horn, dec'd: Betsy, Wilkenson, Jefferson, Margaret, Peter, Catherine, Rosa, Amelia, Mana, Israel, Clinton, Emily, Harriet, George, Ephraim, Lilly, Martha, Amy, Ely, Robert, Stephen, Rosa, Thomas, Isabella, Georgiana, William, Hannah, Jefferson, William, Andy, Necy, Jerry, Esther, Green, Ann, Oliver, Francis, Madison, Joshua, Mourning, Henry, Amanda, Jordan, Lucy, Martha, President, Nancy, Patsey, Mary, Courtny, Judia, Thomas, Rachel, Sinna, James, Sarah, Joseph, Benjamin, John, Nash, Lucinda, Kitty, Samuel, Hannah, Judge, Ally, Harriet, Charles, Eliza, Malinda, Armenta, Rachel, Gilbert, Austen, Amy, Laura, Charles, and Buchanon, 78 in number, and sett off to Mrs. Rebecca Horn, widow of said deceased, $\frac{1}{5}$ thereof in value.

153 And you will divide the remainder among the several distributors of said deceased, viz, John A. C. Horn, Sarah A. Lockhart, wife of Lockhart, Narcissa M. Lockhart, wife of Lockhart, Mary R. McPhail, wife of McPhail, Elizabeth, P. Dumas, Frances L. Bryan, wife of Leonidas L. Bryan, and in making said division you will take into account the following amounts advanced by said John Horn, in his lifetime, so as to make the shares of said distributors including in the said shares the amounts so advanced equal, viz, the sum of $1,650.00, advanced to John A. C. Horn; the sum of $3,400.00 advanced to Narcissa M. Lockhart; the sum of $4,400.00 advanced to Sarah A. Lockhart; the sum of $6,300.00 advanced to Frances L. Bryan, and the sum of $8,617.00 advanced to Elizabeth P. Dumas, you being first duly sworn to make said division fairly and impartially. And you will report your said division in writing & under oath to this court on the second Monday in January next.

Given under my hand this 13th day of Dec'r, 1858 (1858.)

(S'g) JAMES A. YOUNG, *Judge, &c.*

Report of division.

STATE OF ALABAMA, *Marengo County:*

We, the undersigned, being authorized by an order issued by the judge of the probate court of the county aforesaid, to set apart and di-
154 vide the negroes of the estate of the late John Horn, dec'd, between the legatees of said estate, have met at the house of the said deceased, on the 29th Dec'r, 1858, and performed that duty in the following manner:

Negroes.	Price.	Names.	Price.
Gilbert	1,900 00	Georgiana	200
Ester	1,000	Kitty	600
Green	1,300	Austin	900
Annie	600	Amy	500
Oliver	400	Judge	950
Frances	200	Hannah	800
Betsy	800	Harriet	900
Madason	2,000	Emily	800
Margaret	1,150	Harriet & child	1,400
Peter	750	Old Rose	100
Catherine	425	Thomas	1,500
Ephraim	1,450	Isabella	1,200
Charles	500	William	1,225
Laura	1,300	Nancy	800
Buchanon	200	Patsey	1,150
Tom	400	Mary	1,050
Rachel	300	Courtney	1,000
Joshua	1,400	Judy	900
Rose & child	1,400	Smena	750
Amelia	600	Nash	1,050
Maria	500	Jim	1,500
Harriet	300	Sarah	1,300
155 Andy	250	Benjamin	1,350
Mourning	900	Joseph	1,400
Henry	1,450	John	650
Amanda	1,100	Delly	500
Jourdan	400	Martha	1,250
Martha	350	Amse	1,200
Lucy	650	Ely	900
President	225	Robert	700
Charles	550	Stephen	200
Eliza	1,000	Hannah & child	1,300
Malinda	1,125	Jefferson	600
Arminta	1,100	William	500
Rachel	900	Wilkinson	1,500
Jerry	1,400		
Lucinda	1,200		$65,700
Samuel	200		

Aggregate am't the widow's dividend 5 shares, chosen the follow'g negroes:

Gilbert	1,900	Tom	400
Charles	500	Rachel	300
Laura	1,300	Nash	1,050
Buchanon	200	Eliza	1,000

Malinda	1,125	Jefferson	1,400
Armenta	1,100	Charles	550
Rachel	900	Patsey	1,150
Jerry	1,400	Isabella	1,200
Lucinda	1,200	Georgiana	200
Samuel	200	Dilly	500
Kitty	600	Stephen	200
	$13,175 00		15,050

John Horn received an advance in his father's lifetime, amount of..	1,650	Advance made to William Lockhart ..... & drew the follow'g negroes·	4,400
And has now drew the following negroes:		Amanda	1,100
Robert	700	Madison	2,000
Ephraim	1,450	Andy	250
156 Amsi	1,200	Israel	300
Joshua	1,400	Rose & child	1,400
Harriet & child	1,400	Judge	950
Margaret	1,150	Wilkinson	1,500
William	1,225	Betsey	800
Austin	900	Catherine	425
Mourning	900	Peter	750
Jourdan	400		
Lucy	650		$13,875 00
President	225		
Courtney	1,000	Advance made to William McPhail	6,300
	14,250 00	He drew the following negroes:	
157 Advances made to Frances Bryan.	8,250	James	1,500 00
She drew the follow'g negroes:		Lurena	750
		Harriet	900
		Harriet	800
Tom	1,500	Sally	1,300
Hannah	1,300	Maney	800
William	500	Ely	900
Jefferson	600	Marion	500
Amy	500	Emily	800
Judy	900		
			$14,550 00
	13,550		
Charles Lockhart rec'd an advance of.....	3,400	Advances made to the widow Dumas	8,617
& drew the following negroes:		The following negroes drawn by her:	
Mary	1,050	Ben	1,350
Martha	350	Green	1,300
Joseph	1,400	Easter	1,000
Martha	1,250	Ann	600
John	650	Oliver	400
Rose	100	Amelia	600
Frances	200		13,867
Henry	1,450		

RECAPITULATION.

Widow Horn	13,175
John Horn rec'd	13,250
Chas. Lockhart "	15,000
W'm Lockhart "	13,875
W'm McPhail "	14,550
Mrs. Bryant "	13,550
" Dumas "	13,867

Sworn to and subscribed before me, an acting justice of the peace for Marengo County, Alabama.
January 9th, 1859.
(S'g) W'M H. GAMBLE, *J. P.*

(S'g) W'M L. DAVIDSON,
J. D. ALEXANDER,
L. ANDERSON,
D. C. ALEXANDER,
Commissioners.

Filed October term, 1859.
J. A. YOUNG, *Judge, &c.*

158 *Receipt for negroes.—Mrs. E. P. Dumas.*

Received of John A. C. Horn, executor of John Horn, deceased, the following negro slaves, to wit: Ben., valued at $1,350; Green, $1,300; Esther, $1,000; Ann, $600; Oliver, $400; Amelia, $600, which is in full of my distributive share of the negro property of said John Horn, dec'd, including the advance made to me of $8,617, specified in the will of the said John Horn, dec'd.
January 8th, 1859.
(S'g) E. P. DUMAS.

Attest:
E. R. SHOWALTER.

Receipt of Mrs. Bryan.

Received of John A. C. Horn, executor John Horn, deceased, the following slaves, which were allotted to me in the division of said slaves, to wit: Tom., Hannah, Nicy, William, Jefferson, Amy, & Judy; also, a negro girl named Alla, which was willed to me by John Horn, deceased.
January 1st, 1859.
(S'g) F. L. BRYAN.

Attest:
Y. M. MOODY.

Receipt of McPhail.

Received of John A. C. Horn, ex't'r of John Horn, deceased, the following-named slaves, to wit: James, value 1,500; Surena, value 750;

Harriet, 900; Hannah, 800; Sarah, 1,300; Nancy, 800; Ely, 900; Manat, 500; Emily, 800, which is in full of my distributive share of
159 the negro property of said John Horn, deceased, in the division of the same, the commissioners having charged me with $6,300, the amount of the advance mentioned in the will of the said John Horn, deceased.

W. W. McPHAIL,
Trustee for Mary R. McPhail.

Attest:
E. R. SHOWALTER.

Receipt of C. J. C. Lockhart.

Received of John A. C. Horn, ex't'r of John Horn, dec'd, the following-named slaves, to wit: Mary, value 1,050; Martha, val. 350; Joseph, 1,400; Martha, 1,250; John, 650; Rose, 100; Frances, 200; Henry, 1,450; Jefferson, 1,400; Charles, 550; Patsey, 1,150; Isabella, 1,200; Georgiana, 200; Dilly, 500, which is in full of my distributive share of the negro property of said John Horn, dec'd, in the division of the same, the commissioners having charged me with $3,400, the amount of the advance mentioned in the will of said John Horn, deceased.

C. J. C. LOCKHART.
NARCISSA LOCKHART.

Attest:
E. R. SHOWALTER.

Receipt of Rebecca Horn.

Received of Jno. A. C. Horn, ex't'r of John Horn, deceased, the following negro slaves, to wit: Gilbert, Laura, Charles, Buchanon, Jerry, Lucinda, Samuel, Kitty, Eliza, Malinda, Arminta, Rachel, Tom.,
160 Rachel, and Nash, being in full of my distributive share of the slaves belonging to the estate of the said John Horn, deceased. Given under my hand this 22d day of January, 1859.

(S'g') her
REBECCA + HORN.
mark.

Witness:
W. COTTON.

Receipt of W'm Lockhart.

Received of John A. C. Horn, executor of John Horn, deceased, the following slaves, to wit: Amanda, val. 1,100; Madison, val. 2,000; Andy, 250; Israel, 300; Rose & child, 1,400; Judge, 950; Wilkinson, 1,500; Betsy, 800; Catherine, 425; Peter, 750, which is in full of my distributive share of the negro property of said John Horn, dec'd, in the division of the same the commissioners having charged me with $4,400, the amount of the advance mentioned in the will of said John Horn, deceased.

(S'g') W. A. LOCKHART.
For S. A. LOCKHART.

Attest:
E. R. SHOWALTER.

ESTATE OF JOHN HORN, DEC'D. } October term, 1859.

Settlement continued.

161 ESTATE OF JOHN HORN, DEC'D. } December term, 1859. December 13th 1859.

Settlement continued by adm'r.

ESTATE OF JOHN HORN. } January term, 1860.

Settlement continued by adm'r.

ESTATE OF JOHN HORN, DEC'D. } March 26th, 1860.

By consent of parties, it is ordered that the partial settlem't of said estate by Jno. A. C. Horn, executor, be continued to the 18th day May next.

Notice to executor to produce original sale bill.

ESTATE OF JOHN HORN, DECEASED, on partial settlement by executor. } Pending in the probate court of Marengo County Alabama.

To Jno. A. C. Horn, as executor, &c., to W. B. Modawell, esq., his attorney:

You are hereby notified and required to produce, on the hearing of your said account and vouchers, the original account of the sales of the personal chattels of said estate, which was kept by W'm McPhail, as clerk, on the sale thereof by you as executor as aforesaid, on or about December 30th, A. D. 1858.

(S'g') ROB'T D. HORT AND CLARKE & TERRILL,

Att'ys for W. A. Lockhart, W. W. McPhall, & other Contestants.

Executed April 27, '60.

S. B. JACKSON, *Sh'ff.*

162 *Objection to ac. for settle't.*

ESTATE OF JOHN HORN, DEC'D. On account of Jno. A. C. Horn, executor of the will, &c., of said dec'd, for partial settlement. } Pending in the probate court of Marengo *court of Marengo* County, Alabama.

The contestants E. P. Dumas, Rebecca Horn, F. L. Bryan, Lockhart, and her husband, Lockhart, being legatees and distributees of said estate, came, by their attorneys, Clark & Terrell & Rob't D. Hort, and, excepting to said account—

1. Move to charge said executor with interest on all moneys received by him as such executor.

2. Move to charge said executor with the whole of the cotton crop of said estate for year A. D. 1858.

3. They except to vouchers in said account numbered as follows: No. 3, 12, 17, 18, 22, 25, 30, 39, 40, 41, 42, 43, 44, 45, & 46, for the grounds, 1st, because they are not proper and reasonable charges against said estate; 2d, they are not properly proven.

And they further move to charge said executor with any moneys

which he may have received and failed to charge to his debit in said account.

CLARKE & TERRELL &
ROB'T D. HORT,
Att'ys for Contestants.

163 *Decree on partial settlement.*

Probate court. Special term held the 21st day of May, 1860, Judge Young, presiding.

ESTATE OF
JOHN HORN, DEC'D.

This day came John A. C. Horn, executor of the will of said deceased, by attorney, and likewise came Charles J. C. Lockhart and Narcissa, his wife, William Lockhart and Sarah, his wife, and William McPhail and Mary R., his wife, and Frances L. Bryan, by their several attorneys. And the account and vouchers of said executor for partial settlement, with the exceptions thereto, being by the court restated, it appears to the satisfaction of the court that notice of the time and place of said settlement has been given by publication for three successive weeks in the Linden Jeffersonian, and that law cause has been regularly continued to the present time of this court. It further appears that, after charging law executor with all wherewith he is properly chargeable and allowing him all just credits, there remains subject to distribution the sum of $10,783.50, derived from the real estate of said testator, and by him directed in his last will to be distributed equally among
164 the said Narcissa Lockhart, Sarah Lockhart, Mary R. McPhail, Frances L. Bryan, & Elizabeth P. Dumas, the respective share of each being $2,156.70 *dollars*. It further appears that there remains on the several accounts with the personal estate of said testator a balance of $5,159.11 *doll's*, which Mrs. Rebecca Horn, widow of said testator, and who has dissented from the will, is entitled to $\frac{1}{5}$, to wit, $1,159.02 *dollars*, leaving to be distributed among the legatees $4,636.09. It further appears that, after certain specific legacies, including the real estate hereinbefore specified, to be charges against the said legatees the following advancements made by him in his lifetime, to wit, to Mrs. Narcissa Lockhart the sum of $3,400 *dollars;* to Mrs. Sarah Lockhart the sum of $4,400 *dollars;* to Mrs. Mary R. McPhail the sum of $6,300.00 *dollars;* to Mrs. Frances L. Bryan the sum of $8,250.00 *dollars;* to Mrs. Elizabeth P. Dumas the sum of $8,614.00 *doll's;* and to Jno. A. C. Horn the sum of $1,650.00, making in the aggregate the sum of $32,614.00 *doll's* advanced by him, and directs all the remainder of his property to be equally divided among the said legatees above named, taking into account the advancement so made to them as afore-
165 said. It further appears that slaves of the value of $65,700.00 have been divided, and the amount of $13,145.00 in value of said slaves have been allotted and set off to Mrs. Rebecca Horn, widow as aforesaid, being thirty-five doll's more than her fifth thereof, and value. And that the slaves of the value of $52,525.00 *dollars* have been allotted and set off to said legatees as follows, to wit: To said Narcissa Lockhart, slaves of the value $11,650.00 *doll's;* to said Sarah Lockhart, slaves of the value of $9,475.00 *doll's;* to said Mary R. McPhail, slaves of the value of $8,250.00 *doll's;* to said Frances L. Bryan, slaves of the value of 5,300.00 dollars; to Elizabeth P. Dumas, slaves of the value

of 5,250.00 dollars; to said John A. C. Horn, slaves of the value of 3,600 dollars. It further appears that, after deducting the share said Rebecca as aforesaid in the said balance in cash derived from the personal estate and in the slaves as allotted to her, and adding the balance of the said sum in cash as charged against said administrator, to the value of said advancements and said slaves so allotted to said legatees, the equal share of each in the aggregate of said sums amounts to 14,963 dollars; and that, after adding to the share Narcissa Lockhart,
166 Sarah Lockhart, Mary R.McPhail, Frances L. Bryan, and Elizabeth P. Dumas, their share of the real estate as aforesaid, their respective shares amount to 17,119.91 dollars each.

It further appears that said executor has delivered to the said widow and to the said legatees except the said Frances L. Bryan, the shares allotted to them as aforesaid, and that he has pai' and advanced to and for and on account of said Charles Lockhart and wife the sum of $2,136.62 *dollars;* to and for and on account of said William Lockhart and wife the sum of $2,636.62 *doll's;* to and for an' on account of said McPhail and wife the sum of $2,136.62 *doll's;* to and for and on account of said Frances L. Bryan the sum of $850.79 *doll's;* and to and for an' on account of said Elizabeth P. Dumas the sum of $2,324.62 *doll's;* and that he has also advanced to said Rebecca Horn, widow, as aforesaid, the sum of 394.26 dollars. It further appears that, after deducting the amount after advancements made respectively by said testator, and value of the slaves delivered, and the several sums so respectively paid to an' on account of said legatees by said executor as
167 aforesaid, all of which will more particularly be seen by reference to the account as stated aforesaid, there remains due to said legatees the following sums, for which they are entitled respectively to decrees, to wit: To said William and Sarah Lockhart, $608.09 *doll's;* to said William McPhail and Mary R., his wife, the sum $433.09 *doll's;* to said Frances L. Bryan the sum of $2,700.18 *doll's;* to said Elizabeth P. Dumas the sum of 928.09 dollars, and that there also remains to said Rebecca Horn the sum of $729.76 *doll's.* It further appears that said Charles Lockhart and wife have received and been advanced the sum of $66.91 *doll's* more than their share of the real and personal estate as heretofore ascertained and declared. It further appears that said John A. C. Horn, after deducting the amount advanced by testator, and the value of the slaves allotted to him from his share of the personal estate as hereinbefore ascertained, is entitled to retain the sum of $713.00 *doll's* to make his equal share under the will of said testator.

It is, therefore, adjudged, ordered, and decreed by the court that the account and vouchers of said executor, as stated as aforesaid, be
168 allowed and received as partial settlement of said estate; and it is further ordered and decreed that said Rebecca Horn, widow, as aforesaid, recover of said John A. C. Horn, executor as aforesaid, the said sum of $729.76 *doll's* so found to be due her as aforesaid; that said William Lockhart and wife recover of said executor said sum of $608.09 *dollars,* so found to be due them as aforesaid; that said William McPhail and wife recover of said executor said sum of $433.09, so found to be due them; and that said Elizabeth P. Dumas recover of said executor the said sum of $928.09 *doll's,* so found to be due her as sforesaid; and it being made to appear that there is a suit now pending in the chancery court of County, in the State of Alabama, where the right of the possession of the slaves and property, herein ascertained to be the share of said Frances L. Bryan, is contested with her husband, Leonidas L. Bryan: It is, therefore, further ordered and decreed by the court

that said John A. C. Horn, executor as aforesaid, hold and retain the slaves so allotted to said Frances L. Bryan and the balance in cash, as hereinbefore ascertained to be due her, subject to the further order and decree of this court, to be made on the determination of said chancery court; and it is further ordered and decreed that said John A. C. Horn retain to his own use the said sum of $713.01 *dollars*, so ascertained to be due him, to make his equal share as aforesaid.

169

(S'g') JAMES A. YOUNG, *Judge*.

Account current on partial settlement.

Estate of John Horn, dec'd, in account with John A. C. Horn, executor, as to real estate.

By amount rec'd from Jno. A. C. Horn for land for which she purchased, belonging to the 5 daughters	4,280		
By am't rec'd of J. B. Craighead on land belonging to same	6,240		
		11,060	
2½ ₀|⁰ comm's		276	50
		$10,783	50
Mrs. Sarah A. Lockhart's share	2,156	70	
" Narcissa M. Lockhart's "	2,156	70	
" Mary R. McPhail "	2,156	70	
" E. P. Dumas "	2,156	70	
" Frances L. Bryan "	2,156	70	
		$10,783	50

170 *Account-current between Jno. A. C. Horn, executor, &c., the estate of John Horn, deceased.*

EXECUTOR, DR.

To am't cash on hand	71		
" " " of Smith & Carmichael	25	61	
" " " W. G. Curry	56	79	
" " " Goodwin & Langhorn	100	00	
" " of cotton crop for 1857 less ⅓, to Jno. A. C. Horn, co-partner, (whole amount, $5,294.32; deduct $1,764.77)	3,529	55	
To am't of crop for 1858 less ⅓ to Jno. A. C. Horn, copartner, (whole amount, $11,448.60, deduct $3,816.20)	7,632	40	
To cash of W'm H. Gamble	5		
" " " Jno. M. Neely	5		
" " " James Simmons	10	75	
" interest on money loaned	40	00	
		11,476	10
" ⅓ of bagging and rope and expenses thereon, for which see vouchers Nos. 25, 30, & 31	130	75	

Dec. 30, 1858.					
Am't sales of perish'ble property, bo't by ex'c'r				3,300 26	
Int. from 30th Dec'r, 1858				103 39	
Error for int. on Grant's act No. 43				1 68	
					3,536 08
					$15,012 18

EXECUTOR, CR.

	By am't paid R. H. Hudson	Vo. No. 1		117 79	
	" " " "		2	47 26	
171	By am't paid R. H. Hudson		3	178 38	
	" " " W. P. Martindale		4	113 00	
By am't paid E. R. Showalter			5	162 63	
" " " Do			6	44 75	
" " " R. H. Lockhart, &c			7	6 00	
" " " Jno. A. C. Horn			8	100	
" " " Ferguson & Boyd			9	22 43	
" " " Bradfeild & Coleman			10	8 75	
" " " Hudson & Haynesworth			11	157 86	
" " " F. M. Dansby			12	10	
" " " L. M. Benford			13	5 75	
" " " Clarke & Langhorn			14	26 00	
" " " Taxes			15	111 97	
" " " Bradfeild & Hudson			16	11	
" " " Clarke & Terrell			17	2,000	
" " " Brooks & Garrett			18	2,000	
" " " E. R. Showalter			19	50 50	
" " " Do			20	308 80	
					4,861 90
" " " W'm Deason			21	9 24	
" " " Jno. A. C. Horn, (withdrawn)			22		
" " " Do			23	286 54	
" " " R. H. Hudson			24	382 96	
" " " B. F. Marshal			25	64 55	
" " " W. B. Modawell			26	10 00	
" " " J. P. Semple, & Co			27	17 15	
" " " Brooks & House			28	3 00	
" " " Geo. W. Booker			29	10 00	
" " " Hinson & Holt			30	47 49	
					1,714 93
172	By am't paid B. F. Marshal		31	315 43	
	" " " Turner & Slackhouse,		32	137 60	
					453 03
					7,670 85
	Less error of				20 00
					7,650 85
	Less error $884 withdrawn, (\22)				884 00
					6,766 85

Clarke & Langhorn	33..	4 50		
By am't paid Bradfeild & Hudson	34..	1 50		
" " " Goodwin & Langhorn	35..	17 45		
" " " Bradfeild & Coleman	36..	38		
" " " L. R. Terrell	37..	31		
" " " Ferguson & Boyd	38..	1 75		
" " " N. A. Agee	39..	668 89		
" " " Torry & Leslie	40..	100		
" " " Huggins & Co., fr't & stor'ge,	41..	5 85		
" " " Jno. Carr	42..	26 00		
" " " W. H. Grant, editor	43..	34 68		
" " " P. N. Booker	44..	50 00		
" " " C. M. Burford	45..	20 00		
" " " Modawell & Abrahams & W.B.M.	46..	450 00		
" " " Brooks' fee		400		
				$8,578 85
Am't court cost ch'g'd to est				50
Bal. carried down to debit of ex				6,382 83
				15,012 18

1860. May 21.

To bal. in hands of executor bro't down			6,382 83
Deduct comm's. on 14,879.75	371 99		
" " " 8,629.05	215 73		
			587 72
			$5,795 11
173 Mrs. Horn's (widow's) share, $\frac{1}{5}$			1,159 02
Am't carr'd over			4,636 09

Statement by the court.

Total value of slaves distributed	65,700	
Deduct $\frac{1}{5}$, allotted to Mrs. Horn	13,175	
		52,525 00
Total advancements to legatees		32,617 00
Cash bal. on ac. after deducting $\frac{1}{5}$		4,636 09
Aggregate		89,778 09
Shares of each of 6 legatees		14,963 01

Statement of acct. with legatees.

1st. Cha's Lockhart & wife, share pers'l est		14,963
" " " " real "		2,156 70
		17,119 71
Deduct advancements	3,400	
Slaves allotted	11,650	
Costs about will	43 87	
settled	12 75	

Jan'y 10, '59.		
Am't p'd by adm'r	2,080	
		17,186 62
Bal. in favor executor		$66 91
2. W'm Lockhart & wife' share pers'n'l est		14,963 00
" " " real "		2,156 70
		17,119 71
Deduct advancements	4,400	
Slaves allotted	9,475 00	
Costs	56 62	
Am't p'd by executor, Jan'y 10, '59	2,080	
" " " " M'ch 26, '60	500	
		16,511 62
Bal. due W. Lockhart & wife		608 09
174 3rd. W'm McPhail and wife' per. prop.		17,119 71
Deduct advancements	6,300 00	
" slaves	8,250 00	
costs	56 62	
Am't p'd by executor Jan'y 10, '59	2,080	
		16,686 62
Bal. due McPhail & wife		433 09
4th. Mrs. Frances L. Bryan's share		17,119 71
Deduct advancements	8,250 00	
slaves	5,300 00	
costs	75 57	
Jan'y 29, '59.		
Am't p'd by adm'r	$775 20	
		14,400 77
Bal. due Mrs. Bryan		2,718 94
5th. Mrs. E. P. Dumas' share real & per. est		17,119 71
Deduct am't advanced by testator	8,617 00	
" " slaves allotted her	5,250 00	
" " costs	56 62	
" " p'd by exec't'r M'ch 26, '60	219 80	
" " Apr'l 18, '60	2,048 20	
		16,191 62
Bal. due Mrs. Dumas		928 09
6. Jno. A. C. Horn' share per. est		14,963 01
Deduct am't advanced by testator	1,650	
" slaves allotted him	12,600	
		14,250 00
Balance due Jno. A. C. Horn		713 01

7. Mrs. Rebecca Horn share per. & real est....		14,299 02
Deduct slaves allotted her.....	13,175	
" am't p'd by ex't'r, Jan'y 29, '59	394 26	
		13,569 26
Bal. due Mrs. Horn.....		729 26

175 Probate court, Marengo County, May term, 1860.

Let the foregoing act, as stated, be allowed and recorded as a partial settlement of said estate, and a decree be rendered thereon accordingly.

J. A. YOUNG, *Judge, &c.*

Orders of satisfaction of decrees.

Probate court, special term, held for Marengo County the 28th day of May, A. D. 1860, Judge Young presiding.

ESTATE OF JOHN HORN, DEC'D.

This day came Jno. A. C. Horn, and filed in court the receipt of Rebecca Horn for $729.76 *dollars*, dated 26th May, 1860, in full of the decree against him of the 21st May, 1860, in her favor; and said John A. C. Horn also filed in court the receipt of W'm A. Lockhart for $608.09, in full of the amount decreed to said William A. & wife in the probate court of this county, on said 21st May, 1860, bearing date the 26th May, 1860, and said Jno. A. C. also filed the receipt of William M. McPhail, bearing date 26th May, 1860, for $433.09, in full of the amount decreed to said McPhail & wife, at the term of this court aforesaid. And the said John A. C. Horn now here pays into court the sum of 928.09 dollars, in full of the amount decreed against him in favor
176 of Elizabeth P. Dumas, at said term of this court, on the partial settlement of said estate.

It is therefore ordered and decreed that said decrees in favor of said Rebecca Horn, William A. Lockhart and wife, William M. McPhail and wife, and Elizabeth P. Dumas against said Jno. A. C. Horn, as executor of said John Horn, deceased, be and stand satisfied and discharged.

JAMES A. YOUNG, *Judge, &c.*

Receipt of R. Horn.

Received of John A. C. Horn, executor of the last will and testament of John Horn, deceased, seven hundred and twenty-nine $\frac{76}{100}$ dollars, in full of the amount decreed to me in the probate court of Marengo County in May, 1860, on partial settlement made by said executor under said will. May 26, 1860.

(S'g') her REBECCA + HORN. mark.

Witness: G. W. COTTON.

Received of Jno. A. C. Horn, executor of the last will and testament

of Jno. Horn, deceased, $608.09, (six hundred and eight dollars and nine cents,) in full of the amount decreed by the probate court of Marengo County, in May, 1860, in favor of my wife, Sarah A. Lockhart, and myself on partial settlement made by said John A. C. Horn, executor under said will, May 26th, 1860.

W'M H. LOCKHART.

Witness: G. W. COTTON.

177 Received of John A. C. Horn, executor of John Horn, dec'd, four hundred and thirty-three doll's and nineteen cents, ($433.19,) in full of the amount decreed to my wife, Mary R. McPhail, and myself in the probate court of Marengo County, in May, 1860, on partial settlement made by the said executor under the last will and testament of Jno. Horn, deceased.

May 26, 1860.

(S'g') W. W. McPHAIL.

Witness: G. W. COTTON.

Received of Jno. A. C. Horn, ex'c't'r of Jno. Horn, deceased, two thousand and eighty doll's, in part payment of my claim in the estate of John Horn, deceased, this January 10, 1859.

(S'g') W'M A. LOCKHART,
Trustee for S. A. Lockhart.

Attest: E. R. SHOWALTER.

Received of John A. C. Horn, exec't'r of John Horn, deceased, two thousand and eighty doll's, in part payment of my claim in the estate of John Horn, deceased, this Jan'y 10, 1859.

(S'g.) C. J. C. LOCKHART &
NARCISSA LOCKHART.

Attest: E. R. SHOWALTER.

Received of John A. C. Horn, exec't'r of John Horn, deceased, two thousand and eighty dollars, in part payment of my claim in the estate of John Horn, deceased.

(S'g.) W. W. McPHAIL,
Trustee for Mary R. McPhail.

Attest: E. R. SHOWALTER.

178 Received of John A. C. Horn, executor of John Horn, deceased, two thousand and forty-eight $\frac{20}{100}$ dollars, as a part of my distributive share of the estate of the said John Horn, deceased, this 18th day of April, A. D. 1860.

E. P. DUMAS.

Witness: JNO. T. WIGGINS.

Received of John A. C. Horn, executor of John Horn, deceased, five hundred dollars, in part payment of my wife's distributive share of the estate of John Horn, deceased.

March 26, 1860.

(S'g.) W. A. LOCKHART.

Received of John A. C. Horn, executor of John Horn, deceased, three hundred and ninety-four $\frac{26}{100}$ doll's, as a part of my distributive share of

the estate of the said John Horn, deceased, this the 29th day of January, 1859.

her
REBECCA × HORN.
mark.

Witness: W. COTTON.

ESTATE OF JOHN HORN, DEC'D. } August 6th, 1860.

On the application of W'm McPhail and wife and others by attorney, it is ordered that a citation issue to John A. C. Horn, executor, to appear at the September term of this court next, and file his ac-
179 counts and vouchers for a final settlement of said estate, or show cause against the same.

(S'g.) JA'S A. YOUNG, *Judge.*

ESTATE OF JOHN HORN, DEC'D. } January 28th, 1861.

On the application of W. M. McPhail and wife by attorney, it is ordered by the court that a citation issue to John A. C. Horn, executor of said estate, to appear at a term of this court to be holden on the 2d Monday in April next, and file his account and vouchers for a partial settlement of said estate.

(S'g.) JAMES A. YOUNG, *Judge.*

ESTATE OF JOHN HORN, DEC'D. } February term, 1861.

Final settlement continued.

ESTATE OF JOHN HORN, DEC'D. } Probate court, January 20th, 1864.

This day came Jno. A. C. Horn, executor, &c., and filed his account and vouchers for a final settlement of said estate.

It is therefore ordered that said settlement be set for hearing on the 3rd Monday in March next, and that notice thereof be given by publication for three successive weeks in the Linden Jeffersonian newspaper.

JA'S A. YOUNG, *Judge.*

180 *Linden Jeffersonian, January 22, '64.*

STATE OF ALABAMA, *Marengo County:*

ESTATE OF JOHN HORN, DECEASED. } Probate court, January term, 1864.

This day came John A. C. Horn, administrator of said estate and filed his account and vouchers for a final settlement of said estate. It is therefore ordered by the court that said settlement be set for hearing on the 3rd Monday in M'ch next, and that publication of the same be made in the Linden Jeffersonian for three successive weeks, so that all persons interested may attend and contest the same if they think proper.

Jan. 22, '64. 36-3w.

(S'g) JAMES A. YOUNG, *Judge.*

At a stated term of the probate court of Marengo County, begun and held on the 2d Monday and 11th day of April, A. D. 1864, Hon. James A. Young, presiding, the following proceedings were had and orders made:

ESTATE OF
JOHN HORN, DEC'D.

Final settlement continued to 1st Monday in May next.

181 To the Hon. James A. Young, judge of probate:

I hereby resign as executor of the est. of Jno. Horn, dec'd.
May 2, '64.

J. A. C. HORN.

STATE OF ALABAMA, *Marengo County:*

IN THE MATTER OF THE FINAL SETTLEMENT of the estate of John Horn, deceased. } Probate court, special term, May 2d, 1864.

This day came John A. C. Horn, executor of the last will and testament of John Horn, deceased, and it appearing that John A. C. Horn has heretofore filed his account and vouchers for a final settlement of said estate, and that notice of the time and place of said settlement has been given by publication for three successive weeks in the Linden Jeffersonian, a newspaper published in said county, the said account and vouchers comes on the day to be heard; and it appearing that said executor has filed a list of the heirs and legatees of said deceased, all of whom are of full age and of sound mind, and said account and vouchers being by the court audited and stated, showing a balance on the general account with said estate of two thousand three hundred and eighteen $\frac{86}{100}$ dollars in his hands, subject to distribution derived from the personal estate of said deceased, of which

182 Rebecca Horn, the widow of said deceased, who has dissented from the provisions of his will is entitled to one-fifth, amounting to four hundred and sixty-three $\frac{77}{100}$ doll's, and each of the other legatees one-sixth of the remainder, amounting to three hundred and nine $\frac{18}{100}$; and that he has a further balance of four thousand nine hundred and thirty-three $\frac{14}{100}$ doll's, derived from the real estate sold by direction of said testator, and the proceeds thereof devised to Narcissa M. Lockhart, (wife of C. J. C. Lockhart,) Sarah A. Lockhart, (wife of William Lockhart,) Elizabeth P. Dumas, Mary R. McPhail, (wife of William McPhail,) and Frances L. Bryan, the share of each in the balance of the proceeds of the land aforesaid being $986.60 *doll's*. It further appears that said executor has fully administered said estate, and has discharged all the specific legacies and distributed the slaves according to the provisions of said will, and has invested the mon*ies* of said estate in four per cent. confederate bonds. It is therefore adjudged, ordered, and decreed by the court that said account and vouchers, as stated, be passed and allowed as a final settlement of said estate. It further

183 appears that said executor has advanced to Narcissa Lockhart, in part of her distributive share of said balances from the real and personal estate the sum of eighty-eight $\frac{61}{100}$ doll's, leaving still due her twelve hundred and seven $\frac{17}{100}$. It further appears that said executor has advanced to said Mary McPhail, (wife of W'm McPhail,) the sum of two hundred and thirteen $\frac{15}{100}$ dollars, leaving still due her the

sum of one thousand and eighty-two $\frac{63}{100}$ dollars, on account of her distributive share of the balance of the personal and real estate aforesaid. And it further appears that said executor has advanced to the said Frances L. Bryan, in part of her said share of said balances the sum of three hundred dollars, leaving still due to her the sum of nine hundred and ninety-five $\frac{78}{100}$ doll's. It further appears that said Elizabeth P. Dumas has intermarried with one B. O. Nabors, and the said executor now here moves the court that said B. O. Nabors and Elizabeth P. Nabors, his wife, be required to execute a bond for the payment and delivery of the share of the said estate to which the said Elizabeth P. appears entitled as aforesaid, to the persons who may be entitled to the remainder
184 upon the termination of the life estate of the said Elizabeth, and it appearing from the will of said deceased, that the portion of the estate of said testator bequeathed and devised to said Elizbeth P. in the event "she should die and leave no child" or children surviving her, it is (his) will that her portion of his property shall go back to her brother and sisters, and her present or any other future husband shall have no part of it.

It ordered and decreed that said motion be continued, and notice thereof be given to the said Elizabeth P. & B. O. Nabors, and that said executor retain the share of the said Elizabeth P. in said balance until said motion be heard and determined by the court; and it is further ordered, adjudged, and decreed that said John A. C. Horn, executor as aforesaid, pay to said Rebecca Horn, widow of aforesaid , the said sum of $463.77 as her $\frac{1}{5}$ of said balance of the personal estate as aforesaid in the bonds of the Confederate States so invested by him as aforesaid.

It is further ordered and decreed by the court that said John A. C. Horn, executor, &c., pay to Cha's J. C. Lockhart and Narcissa M., his wife, the said sum of twelve hundred and seven $\frac{17}{100}$ dollars so
185 remaining due them as aforesaid in confederate bonds as aforesaid. It is further ordered and decreed by the court that said John A. C. Horn pay to said W'm Lockhart and Sarah A., his wife, the said sum of twelve hundred and ninety-five $\frac{78}{100}$ doll's, their share of the real and personal estate aforesaid in said bonds of the Confederate States. It is further ordered and decreed that said John A. C. Horn pay to said William McPhail and Mary A., his wife, the said sum of one thousand and eighty-two $\frac{63}{100}$ dollars so remaining due them as aforesaid in bonds of the Confederate States as aforesaid. It is further ordered and decreed that said John A. C. Horn, executor, &c., pay to said Frances L. Bryan the said balance of nine hundred and twenty-five $\frac{78}{100}$ dollars so remaining due her as aforesaid in bonds as aforesaid. It is further ordered and decreed that said John A. C. Horn retain the sum of three hundred and nine $\frac{18}{100}$ dollars as his share of balances from the personal estate aforesaid. And it is further ordered and decreed that said John A. C. Horn, as executor, retain in his hands the said balance of $1,295.78 *dollars* devised to said B. O. Nabors &
186 wife, subject to the further order and decree of this court upon the determination of the motion of said Horn. And said John A. C. Horn, now here, file' his resignation as executor of said estate, which is ordered to be filed and recorded.

(S'g') JAMES A. YOUNG, *Judge, &c.*

John A. C. Horn, exec't'r, in acc't with estate of John Horn, dec'd, on final settlement.

1860.		ADMINISTRATOR, CR.			
Aug. 24.	By am't p'd	W. B. Modawell, att'y, No..1	6 89		
	" " "	W. R. Rand & Co., " .2	5 20		
1859.					
Nov. 7.	" " "	Thomas Williams.....3	50		
1860.					
Feb'y 4.	" " "	Jno. D. Phelan, C. S. court.4	60 40		
Jan. 1.	" " "	Luckett & Cunningham..5	2 00		
1859.					
Oct. 7.	" " "	T. G. Fowler & Bro's.....6	23 62		
	" " "	J. A. C. Horn, cash loaned.7	1,285 66		
	" " "	W. B. Modawell, att'y....8	525 00		
	" " "	W. H. Grant.....9	8 00		
	" " "	R. D. Marshal, C. taxes..10	80 00		
	" " "	Ja's A. Young, for Judge McClanahan.....11	105 46		
					2,152 23
	" comm's on $12,340.76, @ 2½ of.....				308 51
	" " Ja's A. Young, court cost...				33
					2,493 74
	By am't discount on old issue on vouchers 8 & 11, & court costs.....				331 73
					2,825 47

187 *John A. C. Horn, exec't'r, in account with estate of John Horn, dec'd, on final settlement.*

1859.		ADMINISTRATOR, DR.		
Dec. 31.	To am't rec'd of	A. K. Sheppard, R. R. stock.....	322 50	
1860.				
Jan. 7.	" " "	Jno. D. Alexander, note & int.....	200 35	
	" " "	Jno. L. Murphy.....	53 50	
	" " "	interest on above.....	10	
M'ch 26.	" " "	W. A. Lockhart.....	40 00	
	" " "	interest	75	
" 27.	To am't rec'd	Levi Borden, note & int..	66 30	
	" " "	S. A. Fitts....	47 12	
July 13.	" " "	G. A. H. Buchanon.....	345 04	
	" " "	W. W. Horton, by Modawell	137 80	
	" " "	J. W. Harrington.....	159 09	
Dec. 25.	" " "	G. W. Cotton, for gun....	8 00	
1861.				
	" " "	Rebecca Horn.....	1,289 99	
	" (land)	J. B. Craighead, note balance	5,075 20	
	" am't rec'd	W'm Gamble, by Modawell, att'y	65 57	

"	"	"	W. Woolf	132 49	
"	"	"	R. M. Booker	101 17	
"	"	"	Aiken & Orr	26 23	
"	"	"	" "	227 53	
"	"	"	Jno. W. Neely	55 38	
"	"	"	Samuel Orr	1,098 39	
"	"	"	int. on $5,075.20, used by exec't'r 1 year	406 01	
"	"	"	" 2,000 " " 2 "	320	
					10,178 51
			Am't debits for real estate	5,481 20	
			" " " personal "	4,697 30	
					$9,178 50

188 Account restated by the court with personal est.:

DEBIT OF ADM'R:

To am't rec'd from personal est. bro't for*d*w'd	4,697 30	
By am't paid out chargeable vs. personal estate	2,378 44	
		2,318 86

Am't to be distributed viz:

Mrs. Rebecca Horn $\frac{1}{7}$ (widow)	463 $77\frac{1}{5}$	
" W'm A. & Sarah Lockhart	309 18	
" C. J. C. & Narcissa Lockhart	309 18	
" W'm & Mary McPhail	309 18	
" B. O. & Elizabeth P. Nabors	309 18	
" Frances L. Bryan	309 18	
" Jno. A. C. Horn	309 18	
		2,318 86

Restatement of acc't with real est.:

DEBITS OF EXECUTOR.

To am't rec'd on acc't of real estate		5,481 20

CREDITS.

By am't credits for expenses, &c	447 03	
" expenses of admin't'r to Linden	101 14	
		548 17
Balance on real estate		4,933 04

Distributed as follows, to wit:

To W'm Lockhart and wife	986 60	
" C. J. C. Lockhart & wife	986 60	
" W. McPhail & wife	986 60	
" B. O. Nabors & wife	986 60	
" Frances L. Bryan	986 60	
		4,933 04

189 *Account of advancements to executor to individual distributees in part of their shares.*

Am't of Mrs. Rebecca Horn's share decreed to her		463 77
Am't of W'm Lockhart & wife, share of personal prop.	309 18	
" " " " real est.	986 60	
" to be decreed them		1,295 78
Am't of C. J. C. Lockhart wife, share per. est.	309 18	
" " " " real "	986 60	
		1,295 78
Deduct bal. vs. them on settlm't of 1860, & int., see decree, 1860		88 61
Balance to be decreed to them		1,207 17
Am't of W. McPhail & wife, share pers'n'l est.	309 18	
" " " " real "	986 60	
		1,295 78
Deduct am'ts advanced		213 15
Bal. to be decreed them		1,082 63
Am't of B. O. Nabors & wife, share per. est.	309 18	
" " " " real "	986 60	
		1,295 78
Am't to be decreed them		1,295 78
Am't Mrs. F. L. Bryan's share personal est.	309 18	
" " " real "	986 60	
		1,295 78
Deduct am't advanced her		300
Bal. to be decreed to her		995 78
Am't to be decreed Jno. A. C. Horn' per. est.		309 18

E. E. J. A. C. HORN.

Subscribed to & sworn before me May 2d, 1864.
JA'S A. YOUNG, *Judge, &c.*

190 Filed Jan'y 20, 1864, set for 3 Monday in March, 1864.
J. A. YOUNG, *Judge.*

STATE OF ALABAMA, *Marengo County:*

I, Thomas J. Woolf, judge of the court of probate in and for county and State, which court is a court of record, and the said judge ex-officio clerk thereof, and keeper of the seal, do hereby certify that the fore-

going pages, numbering from (1) one to (81) eighty-one, inclusive, contain a true, correct, and perfect transcript of records and proceedings had in said court, and of papers on file in my office relating to the probate and execution of the will of John Horn, deceased, and the administration of the estate of said deceased in said court, by John A. C. Horn, the executor of said will; all of which appear to us from the records of said court and papers on file in my office. And I further certify that this attestation is in due form and made by the proper officer.

SEAL PROBATE C'T, MARENGO COUNTY. (S'g)

In testimony whereof I, the said judge, have hereunto set my hand and affixed the seal of said court at office in Linden on this 22d day of May, A. D. 1868.

THO'S J. WOOLF, *Judge.*

[One dollar State stamp.]

[5-ct. rev. stamp.]

191 Received of John A. C. Horn, forty-five doll's, in full payment for the foregoing transcript of the proceedings had in the probate court of Marengo Co., Ala., in the matter of the settlement of the estate of John Horn, deceased, June 26, 1868.

(S'g) THO. J. WOOLF, *Judge, &c.*

[2-ct. rev. stamp.]

"EXHIBIT B."

Code of Alabama, (1852,) page 369, §1900.

On the death of any person, the slaves in his possession employed in making a crop, must be continued on the plantation in the possession of the decedent at the time of his death until the last day of December following, under the direction and control of the executor or administrator, and then delivered to those entitled thereto, or if the property of the decedent, duly administered.

192 "EXHIBIT C."

An act to authorize executors, administrators, guardians, and trustees, to make loans to the Confederate States, and to purchase and receive in payment of debts due them, bonds and treasury notes of the Confederate States or of the State of Alabama, and coupons which are due on bonds of the Confederate States and of said State.

SEC. 3. *And be it further enacted*, That all guardians, executors, administrators, and trustees may purchase bonds of the Confederate States or of the State of Alabama, for the estates they respect*fully* represent, and may receive in payment of any debts due them as such, or due the estates they respectively represent, the treasury notes of said Confederate States and of said State, the bonds of said Confederate States and of said State, and coupons which are due on bonds of said Confederate States and of said State.

Approved November 9, 1861.

An act to authorize executors, administrators, guardians, and
193 trustees to receive treasury notes of this State and of the Confederate States, in payment of property sold by them as such.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the*

State of Alabama in general assembly convened, That in all cases where property has been ordered to be sold for cash by the decree of any court of this State, and the executor, administrator. guardian, trustee or other party making the sale has received as cash the treasury notes of this State or of the Confederate States, the party so receiving the same shall be exempt from any personal liability for so doing, and shall not be liable to account for the proceeds of sale so received, except in the treasury notes which he or she received. And whenever any property shall hereafter be ordered to be sold for cash by the order or decree of any court of this State, the party making the sale may reeeive as cash the treasury notes of this State or of the Confederate States.

Approved November 23, 1863.

194 An act for the relief of executors, administrators, guardians, and trustees.

SEC. 2. *Be it further enacted*, That if any such executor or administrator has received treasury notes or bonds of the Confederate States or the State of Alabama in payment for property sold, or of indebtedness to the estate which he may represent in good faith, and the estate of his testator or intestate has become insolvent in consequence of the worthlessness of any such notes or bonds, then such executor or administrator shall not be held liable for the amount of such notes or bonds.

SEC. 4. *Be it further enacted*, That whenever any executor, administrator, guardian, or trustee shall have bona fide received any confederate treasury notes or bonds in payment of property sold as aforesaid, or in payment of any indebtedness due their said estates, or may have bonded any of the assetts of their respective estates, in either confederate or State bonds, he shall not be held liable to account for the said funds or assetts either to creditors, distributees, or legatees.

Approved February 23, 1863.

195 "EXHIBIT D."

SEC. 44. In no valuation of credits under the provisions of this act shall any credit upon which the holder will endorse in writing his willingness to receive confederate notes in payment be valued at a higher rate.

Approved May 1st, 1863.

(Acts of 3rd session of first congress, 1863.)

"EXHIBIT E."

An act to reduce the currency and to authorize a new issue of notes and bonds.

SECT. 1. *The congress of the Confederate States of America do enact*, That the holders of all treasury notes above the denomination of five dollars not bearing interest, shall be allowed until the first day of April, 1864, east of the Mississippi River, and until the first day of July, 1864, west of the Mississippi River, to find the same, and until the periods and at the places stated, the holders of all such treasury notes shall be allowed to find the same in registered bonds payable twenty years after their date, bearing interest at the rate of four per cent. per annum, payable on the 1st day of January and July each year.

196 SEC. 2. The secretary of the treasury is hereby authorized to issue the bonds required for the funding, provided for in the preceeding section; and until the bonds can be prepared he may issue certificates to answer the purpose. Such bonds and certificates shall be receivable, without interest, in payment of all Government dues, payable in the year 1864, except export and imports duties.

SECTION 3. That all treasury notes of the denomination of one hundred dollars, not bearing interest, which shall not be presented for funding under the provisions of the 1st section of this act, shall, from and after the first day of April, 1864. east of the Mississippi River, and the first day of July, 1864, west of the Mississippi River, cease to be receivable in payment of public dues; and said notes, if not so presented at that time, shall, in addition to the tax of thirty-three and one-third cents imposed in the fourth section of this act, be subject to a tax of ten per cent. per month until so presented; which tax will attach to said notes wherever circulated, and shall be deducted from the face of said notes whenever presented for payment or for funding; and
197 said notes shall not be exchangeable for the new issue of treasury notes provided for in this act.

SECTION 4. That on all said treasury notes not funded or used in payment of taxes at the dates and places prescribed in the first section of this act, there shall be levied at said dates and places a tax of thirty-three and one-third cents for every dollar promised on the face of said notes. Said tax shall attach to said notes wherever circulated, and shall be collected by deducting the same at the treasury, its depositories, and by the tax collectors and by all Government officers receiving the same, whenever presented for payment, or for funding, or in payment of Government dues, or for postage, or in exchange for new notes as hereinafter provided; and said treasury notes shall be fundable in bonds, as provided in the 1st section of this act, until the first day of January, 1865, at the rate of sixty-six and two-third cents on the dollar; and it shall be the duty of the secretary of the treasury, at any time between the first of April, east, and the first of July, 1864, west, of the Mississippi River, and the first day of January, 1865, to substitute and exchange new treasury notes for the same, at the rate of sixty-six and two-third cents on the dollar: *Provided*, That notes
198 of the denomination of one hundred dollars shall not be entitled to the privilege of said exchange: *Provided further*, That the right to fund any of said treasury notes after first day of January, 1865, is hereby taken away: *And provided further*, That upon all such treasury notes which may remain outstanding on the 1st day of January, 1865, and which may not be exchanged for new treasury notes as herein provided, a tax of one hundred per cent. is hereby imposed.

SECTION 5. That after the first day of April next, all authority heretofore given to the secretary of the treasury to issue treasury notes, shall be, and is hereby, revoked: *Provided*, The secretary of the treasury may after that time issue new treasury notes in such form as he may prescribe, payable two years after the ratification of a treaty of peace with the United States; said new issue to be receivable in payment of all public dues, except export and import duties, and to be issued in exchange for old notes, at the rates of two dollars for the new and three dollars for the old issues, whether said old notes be surrendered for exchange by the holders thereof, or be received into the
199 treasury under the provisions of this act; and the holders of the new notes, or of the old notes, except those of the denomination of one hundred dollars, after they are reduced to sixty-six and two-

third cents on the dollar, by the tax aforesaid, may convert the same into call-certificates, bearing interest at the rate of four per cent. per annum, and payable two years after the ratification of a treaty of peace with the United States, unless sooner converted into new notes.

SECTION 6. That, to pay the expenses of the government not otherwise provided for, the secretary of the treasury is hereby authorized to issue six per cent. bonds to an amount not exceeding five hundred million of dollars, the principal and interest whereof shall be free from taxation; and for the payment of the interest thereon, the entire nett receipts of any export duty hereafter laid on the value of all cotton, tobacco, and naval stores, which shall be exported from the Confederate States, and the nett proceeds of the import duties not laid, or so much thereof as may be necessary to pay annually the interest,
200 are hereby specially pledged: *Provided*, That the duties now laid upon imports and hereby pledged, shall hereafter be paid in specie, or in sterling exchange, or in the coupons of said bonds.

SEC. 7. That the secretary of the treasury is hereby authorized from time to time, as the wants of the treasury may require it, to sell or hypothecate for treasury notes said bonds or any part thereof, upon the best terms he can, so as to meet appropriations by congress, and at the same time reduce and restrict the amount of the circulation in treasury notes within reasonable and safe limits.

SECTION 8. The bonds authorized by the sixth section of this act may be either registered or coupon bonds, as the parties taken them may elect, and they may be exchanged for each other, under such regulations as the secretary of the treasury may prescribe. They shall be for one hundred dollars, or some multiple of one hundred dollars; and shall, together with the coupons thereto attached, be in such form and of such authentication as the secretary of the treasury may prescribe; the interest shall be payable half-yearly—on the first of January
201 and July in each year—the principal shall be payable not less than thirty years from their date.

SEC. 9. All call-certificates shall be fundable, and shall be taxed in all respects as is provided for the treasury notes into which they are convertible; if not converted before the time fixed for taxing the treasury, such certificates shall, from that time, bear interest upon only sixty-six and two-third cents for every dollar promised upon their face, and shall be redeemable only in new treasury notes, at that rate; but after the passage of this act no call-certificates shall be issued until after the first day of April, 1864.

SEC. 10. That if any bank of deposit shall give its depositors the bonds authorized by the first section of this act in exchange for their deposits, and specify the same on the bonds by some distinctive mark or token, to be agreed upon by the secretary of the treasury, then the said depositors shall be entitled to receive the amount of said bonds in treasury notes, bearing no interest, and outstanding at the passage of this act: *Provided*, The said bonds are presented before the privilege of funding said notes at par shall cease, as herein prescribed.

202 SEC. 11. That all treasury notes heretofore issued of the denomination of five dollars, shall continue to be receivable in payment of public dues as provided by law, and fundable at par under the provisions of this act, until the first day of July, 1864, east, and until the first day of October, 1864, west, of the Mississippi River, but after that time they shall be subject to a tax of thirty-three and one-third cents on every dollar promised on the face thereof, said tax to attach to said notes wherever circulated, and said notes to be fundable and ex-

changeable for new treasury notes as herein provided, subject to the deduction of said tax.

SEC. 12. That any State, holding treasury notes, received before the times herein fixed for taxing said notes, shall be allowed, until the first day of January, 1865, to fund the same in six per cent. bonds of the Confederate States, payable twenty years after date, and the interest semi-annually. But all treasury notes, received by any State after the time fixed for taxing the same as aforesaid, shall be held to have
203 been received, diminished by the amount of said tax. The discrimination between the notes subject to the tax. and those not so subject, shall be left to the good faith of each State, and the certificate of the governor thereof shall in such case be conclusive.

SEC. 13. That treasury notes, heretofore issued bearing interest at the rate of seven dollars and thirty cents on the one hundred dollars per annum, shall no longer be received in payment of public dues, but shall be deemed and considered bonds of the Confederate States payable two years after a ratification of a treaty of peace with the United States, bearing the rate of interest specified on their face, payable on the first day of January in each and every year.

SEC. 14. That the secretary of the treasury be, and is hereby, authorized, in case the exigenc'es of the government should require it, to pay the demand of any public creditor, whose debt may be contracted after the passage of this act, willing to receive the same in a certificate of indebtedness to be issued by said secretary in such form as he
204 may deem proper, payable two years after a ratification of a treaty of peace with the United States, bearing interest at the rate of six per cent. per annum, payable semi-annually, and transferable only by special endorsement under regulations to be prescribed by the secretary of the treasury, and said certificate shall be exempt from taxation in principal and interest.

SEC. 15. The secretary of the treasury shall forthwith advertise this act in such newspapers published in the several States, and by such other means as shall secure immediate publicity, and the secretary of war and the secretary of the navy shall each cause it to be published in general orders for the information of the army and navy.

SEC. 17. The forty-second section of this act for the assessment and collection of taxes approved May 1st, 1863. is hereby repealed.

SEC. 18. The secretary of the treasury is hereby authorized and required upon the application of the holder of any call-certificate, which, by the first section of the act to provide for the funding and further issue of treasury notes, approved March twenty-third, 1863, was
205 required to be thereafter deemed to be a bond, to issue to such holders a bond therefore upon the terms provided by said act, approved Feb'y 17th, 1864.

"Exhibit E." Act to reduce the currency, approved Feb. 17, 1864.

We hereby agree that, in the case of the Lockharts et al. vs. John A. C. Horn et al. in the U. States court, *that* the exhibits referred to in the answer, setting forth the acts of the confederate congress and parts thereof, may be appended to said answer after the same is filed, and be considered as part of said answer the same as if the same were appended before said answer was filed.

July 28, 1868.

BOYLES & OVERALL,
Sol. for Compl'nt.

As to Exhibits D & E.

206 "EXHIBIT F."

An act for the relief of executors, administrators and guardians.

SEC. 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened*, That executors, administrators, and guardians be, and they are hereby, authorized to exchange all the Confederate States treasury notes, they may have on hand belonging to the estates or wards they represent, dated prior to the seventeenth February, 1864, for new issue of confederate notes, and if the exchange cannot be immediately effected, to deposit said notes of the old issue in any Confederate States depository, and receive therefor call-certificates of the Confederate States government.

Approved December 13th, 1864.

207 "EXHIBIT G."

Bond.

No. 1602.] CONFEDERATE STATES OF AMERICA,
$7,900.00.] DEPOSITORY OFFICE, SELMA, ALA.,
March 16th, 1864.

Four per cent. per annum.

This will certify that John A. C. Horn, executor of John Horn, dec'd, has paid in at this office seven thousand nine hundred dollars for which amount registered bonds of the Confederate States of America, bearing interest from this date at the rate of four per cent. per annum, will be issued to him under the act to reduce the currency, and to authorize a new issue of notes and bond, approved February 17th, 1864, upon the surrender of this certificate at this office.

(S'd) W. M. SMITH,
Depositary.

By GEO. R. BOYD.

208 EXHIBIT H.

An act for the relief of executors, administrators, guardians, and trustees.

SEC. 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened*, That whenever any executor, administrator, guardian, or trustee shall have deposited treasury notes of the Confederate States belonging to the estate of which he is executor, administrator, guardian, or trustee, for the purpose of obtaining four per bonds of the Confederate States, under the act of congress to reduce the currency, the certificates of the deposit or the bonds when obtained shall be distributed in the same way and proportion as the treasury notes themselves would be; and, on settlement of the estate for which the certificates or bonds were obtained, the certificates or bonds shall be paid to the parties entitled to them or the probate judge or register, as the case may require, and credited to the executor, administrator, guardian, or trustee making the settlement as money.

SEC. 2. *And be it further enacted*, That whenever it shall be
209 necessary to effect a division of any bonds or certificates belonging to any estate, among the parties interested in the estate to sell such bonds or certificates, the same may be sold by order of court in the same way as other personal property is now allowed to be sold for division.

Approved October 7th, 1864.

An act for the protection of executors, administrators, guardians, and trustees.

SEC. 1. *Be it enacted by the senate and house of representatives of the State of Alabama in general assembly convened*, That if upon any settlement made in any court of this State by an executor, administrator, guardian, or trustee it shall appear that the assetts with which he is chargeable consist of treasury notes of this State or of the Confederate States, received by him in pursuance of laws of this State, he shall only be accountable for such assetts as he actually received, and the decree against him shall specify what description of assetts he is chargeable with, and may be satisfied by the payment of the decree with such assetts either to the parties entitled to the same or to the
210 probate judge, clerk, or register, as the case may be, and the payment or tender of payment shall be a satisfaction of said decree.

(Three other sections in the act.)

Approved December 3rd, 1864.

An act to authorize guardians, executors, and administrators to sell State and confederate bonds upon orders of judges of probate.

SECTION 1. *Be it enacted, &c.*, That the second section of the act approved 7th October, 1864, "for the relief of executors, administrators, guardians, or trustees." be, the same is hereby, repealed, and that the following be substituted in lieu thereof as the second section of said act:

SECTION 2. *Be it further enacted*, That the judges of probate shall have power, upon the application of any executor, administrator, or guardian who holds as assetts any bond or bonds of this State or of the Confederate States, or any four per cent. or six per cent. certificates of the Confederate States, or any other public security, to order the
211 sale of such bonds or certificates, or other public security, *to order the sale of such bonds or certificates or other public securities*, either at public or private sale, and to prescribe what notice of the sale shall be given when ordered to be public; and whenever any sale shall be made under any such order, it shall be the duty of the party making it to make a report of it to the court ordering it within twenty days after making it, and the court may confirm or set aside the sale as he deems best for the interest of the estate.

Approved December 10th, 1864.

EXHIBIT I.

Revised code of Alabama, sec. 2135.

SEC. 2135.—Liability for receipt of or investment in confederate securities.

Whenever any executor or administrator shall have bona fide received

any treasury notes or bonds of the Confederate States or State treasury notes or bonds in payment for property sold as before mentioned, or in payment of any indebtedness due the estate he represents, or may
212 have bonded any of the assetts of such estate in either confederate or State bonds, he shall not be held liable to account for such funds or assetts either to creditors, distributees, or legatees.

Act passed February 23d, 1866.

EXHIBITS K & L.

Code of Alabama, 1852, *sec's* 1654, 1656; *revised code of Alabama*, 1867, *sections* 1972, (1654,) 1974, (1656,) *p.* 429.

§. 1972 (1654.)—Will may be contested in chancery within five years.

Any person interested in any will who has not contested the same under the provisions of the proceeding sections of this article, may, at any time within five years after the admission of such will to probate in this State, contest the validity of the same by bill in chancery in the district in which such will was probated, or in the district in which a material defendant resides.

SECTION 1974 (1656.)—Infants and lunatics allowed a longer time to contest.

213 After the expiration of such five years the validity of the will can only be contested by infants and persons of unsound mind, who are allowed five years from the termination of their respective disabilities; but in no case to exceed twenty years from the probate.

EXHIBIT M.

Code of Alabama, 1852, *sec.* 1915; *revised code of Alabama*, 1867, *sec.* 2274.

SEC. 2274.—Bill in chancery to correct settlements; when to be filed.

When any error of law or fact has occurred in the settlement of any estate of a decedent, to the injury of any party, without any fault or neglect on his part, such party may correct such error by bill in chancery within two years after the final settlement thereof; and the evidence filed in the court of probate in relation to such settlement must be received as evidence in the court of chancery, with such other evidence as may be adduced.

214 "EXHIBIT N."

Code of Alabama, (1852,) *section* 1888; *revised code of Alabama*, 1867, *sec.* 2244.

§2244 (1888.) Cases in which appeals may be taken to the circuit or supreme court.

Appeals may be taken from the probate court upon decrees made under the provisions of this title to the supreme or circuit court in the folfowing cases only:

* * * * *

5. After a final settlement upon any order, decision, or decree made on such settlement, or respecting any item or matter thereof, within six months thereafter.

"EXHIBIT O."

No. 26. An ordinance to ratify certain acts, judgments, and other proceedings therein mentioned.

SECTION 1. All the official acts of acting public officers of this State, and all judgments, orders, and decrees of the several courts of this State, and of the justices of the peace, and of the court of county commissioners, regular upon their face, has, done, and, performed, or ordered to be done, under color of law and in pursuance thereof, and all the acts and sales of executors, administrators, trustees, and guardians, and of judicial and ministerial officers, had, done, and performed, and made in pursuance of and under color of law and in good faith, since the eleventh day of January, eighteen hundred and sixty-one, which are not in conflict with the Constitution of the United States or with the constitution of this State, be, and the same are hereby, ratified and confirmed, subject, however, to the right of appeal and supersedeas according to law: *Provided*, That in all cases in which judgment or decrees have been rendered in all courts of records in this State since the eleventh day of January, 1861, and prior to this date, the party against whom such judgment has been rendered shall be entitled to a new trial, upon affidavit that he was unavoidably absent from the court, at the time of the rendition of the judgment, and that he had no attorney present in court: *And provided further*, The court shall be satisfied, from all the facts that may be submitted by affidavit by both parties, that a good and meritorious defense exists: *And provided further*, Such application for a new trial is made within twelve months from the adoption of this ordinance.

Adopted 28th September, 1865.

(Answer:) Filed July 28th, 1868.
(S'g) N. W. TRIMBLE, *Clerk.*

Decree pro confesso.

Circuit court of the United States for the fifth jucicial circuit and southern district of Alabama. Adjourned term, January 10th, A. D. 1870.

Court met pursuant to adjournment. Present, the Honorable William B. Woods, judge, presiding.

WILLIAM LOCKHART AND WIFE AND NARCISSA P. Lockhart *vs.* JOHN A. C. HORN AND OTHERS. } No. 16. On the equity side of the court.

The complainants, by their attorneys, move the court for decrees pro confesso against John D. Alexander, in his individual capacity, and also, as the administrator of Joseph M. Alexander, and also, as administrator of Rebecca Stover, and against S. S. King, as the administrator of N. B. Lessure, and also, against Leonidas

L. Bryan and Francis L. Bryan, and also, against Belton O. Nabors and Elizabeth Nabors, and it appearing to the satisfaction of the court, that process of subpœna has been duly issued on each of said defendants, requiring them to appear and plead, answer, or demur, to the bill of complaint filed against them in this cause, and it further appearing that the time fixed for so appearing and answering said bill in each of said subpœnas has elapsed, and that none of said defendants have pleaded, answered, or demurred to said bill of complaint;

It is therefore ordered, adjudged, and decreed, that the said bill of complaint be taken for confessed as against each of said defendants, and in the several characters in which they are respectively sued, as to all and singular the charges, statements, and allegations thereof.

* * * * *

218 *Affidavit.*

In chancery in the circuit court of the United States, at Mobile, Ala.

LOCKHART & WIFE AND OTHERS, COMPL'TS,
vs.
JOHN A. C. HORN, AS EX'OR OF JOHN HORN, and others, def'ts.

S. J. Cumming this day personally appeared before me, N. W. Trimble, clerk of said circuit court, and being duly sworn, on oath saith: That J. D. Alexander, one of the defendants in the above stated case, and who is sued in said case as administrator on the estate of Rebecca Horn, deceased, is not now the adm'r upon said estate, but that one Richard Clark, of Marengo County, Ala., is now the adm'r upon said estate, and has been for some months past.

That said Alexander, as adm'r as aforesaid, has resigned his administration upon said estate and made a final settlement thereof and has turned over the assets of said estate to said Clarke, and has been finally discharged by the probate court of Marengo County, Alabama, from his trust, as such abministrator of Rebecca Horn, dec'd

S. J. CUMMING.

Sworn to and subscribed before me Jan'y 12, 1870.

N. W. TRIMBLE,
Clerk, U. S. Circuit Court
5th Cir. & So. Dist. Alabama.

Filed January 12, 1870.

219 *Decree pro confesso.*

FRIDAY MORNING, *January 14th*, 1870.

Court met pursuant to adjournment. Present, the Honorable William B. Woods, judge presiding.

WILLIAM LOCKHART AND SARAH LOCKHART, his wife, and Narcissa Lockhart
vs.
JOHN A. C. HORN ET ALS.
On the equity side of the court.

This cause come on to be further heard upon the complainants' mo-

tion for a decree pro confesso against John D. Alexander, as administrator of Joseph M. Alexander, and the arguments of the solicitors; and, it appearing to the satisfaction of the court that process of subpœna has been duly issued on said defendant John D. Alexander, as such administrator, requiring him to appear and plead, answer, or demur, to the bill of complaint, filed against him in this cause; and it further appearing that the time fixed for so appearing and answering has elapsed and that said defendant, as such administrator, has not pleaded, answered, or demurred to the said bill of complaint: It is therefore ordered, adjudged, and decreed that the said bill of complaint be taken for confessed as against said defendant John D. Alexander, as
220 such administrator, as to all and singular the charges, statements, and allegations thereof.

* * * * *

Showing for a continuance.

In chancery in the circuit court of the United States, at Mobile, Ala·

WILLIAM LOCKHART AND WIFE, AND OTHERS, complainants,
vs.
JOHN A. C. HORN, AS EX'OR OF JOHN HORN AND others, defendants.

The defendant John A. C. Horn, being duly sworn, on oath says that he is not ready for trial in this case, and moves the court that this cause may be continued till the next term of this court, on the following grounds:

First. On account of the absence of the deposition of A. C. Shepard, deponent can't say at what date the interrogatories to said Shepard were filed, because the original interrogatories propounded to said Shepard are attached to the commission which has been sent out to take his depositions, but affiant says that the commission was issued (and the interrogatories filed,) in time to have been executed and returned to this term of the court, but for the fact that, between the time of the issuance of said commission and before it reached the court, said Shepard had removed
221 from Louisville, Kentucky, to some place in the State of Alabama, and affiant had no notice of said removal until a short time before the time of the meeting of this court, and could not obtain said Shepard's depositions in time for this court, as new comm'rs would have to be appointed, and a new commission issue to them from this court. That affiant would have endeavored to have taken said Shepard's depositions sooner, but could not find out where said Shepard resided until a very short time before the filing of the in't's to him. That said Shephard formerly resided in Perry County, Ala., but had removed since the war to some other State. That by said Shepard, affiant expects to prove that he (Shepard) was at the house of John Horn, now deceased, in Marengo Co., Ala., on Tuesday evening (the day before said John Horn was found lying speechless in his bed, and from which condition said John Horn never recovered, but died on Thursday of the same week,) and had a conversation with said deceased; and in that conversation, said John Horn stated to said Shepard that he, (said Horn, now dec'd,) had given the plantation on which he lived, by will, to his son, John A. C. Horn, (this affiant,) and that he, said John Horn,
222 did not want to buy any more land, but that perhaps his son, John

A. C. Horn, (affiant,) might buy Shepard's land, as Shepard's land lay adjoining the plantation; he, said John Horn, had given to affiant said plantation by will; that said Shepard had, on the Tuesday aforesaid, gone to the house of said John Horn, for the purpose of selling said land to him.

Second. For want of the deposition of Mary Bonner, who lives in Freestone Co., Texas. That he expects to prove by said Mary Bonner, that communication by letter between Wilcox Co., Ala., and said Freeston Co. was open during the war up to the month of June, 1864, and that she received letters from Ala. up to that time, and sent letters to her friends in Ala. up to that time, which letters were received by them.

That he (affiant) also expects to prove by Mrs. McIlvaine, who also resides in Texas, and, as affiant is informed, she resides in said county of Freestone, that letters and communications in writing passed between her and her relations in Wilcox County, Ala., during the war and up to June, 1861; that said Freestone Co., as affiant is informed, lies adjoining Navarro County, in which the complainants lived in 1862, 1863, 1864, and up to this time, and that said Mary Bonner and Mrs. McIlvaine
223 lived about twenty or twenty-five miles from complainants in the year 1864; that this affiant has been informed and believes the information to be true, that all of the complainants had actual notice of the final settlement of the estate of said John Horn, dec'd, in the probate court of Marengo Co., Ala., in May, 1864; that through one Judge Williamson, late a practising attorney in Wilcox Co., Ala., but now deceased, this affiant expected to obtain the proof of such actual knowledge, but, on account of the death of said Williamson, he has been disappointed in obtaining the names of such witnesses. That through one J. L. Halbert, a practising attorney of Navarro Co., Texas, this affiant also expected to obtain the names of witnesses to prove actual notice of said final settlement by all the complainants: and affiant has been in communication with said Halbert on that subject; but that, from some cause or other, the death or removal of said Halbert, or some other cause, said Halbert has not furnished this affiant with the names of witnesses to prove said actual knowledge and notice. And affiant states that he will be able to prove, as he is satisfied and fully believes, that said compl'ts have stated to sundry persons that they had notice of said final settlement, and employed attorneys
224 to attend to the same on their behalf; that both said Williamson and said Halbert were employed by affiant as attorneys to assist in preparing this case, so far as the testimony in the case, and that, by the death of the one, and the want of information from the other, affiant is not prepared to name the witnesses by whom the said notice of final settlement can be proved.

Third. That affiant was informed by one of his solicitors in this case that testimony in the case could not properly be taken by him until after this case was at issue, and that it was not at issue until after decrees pro confesso were rendered against the defendants who had not answered, and that no decrees pro confesso had been taken in the case up to this term of the court.

Affiant further says that he was informed by one of his solicitors in this case that, by a rule of practice on the equity side of this honorable court, no testimony could be taken, after three months from the time the cause was at issue, except by leave of the court, (Rule No. 69;) that no term of this court has been held in this district since the filing of

affiant's answer in this cause; that said answer was filed on the 28th day of July, 1868; and that before affiant could have taken the depo-
225 sitions of the additional necessary witnesses for his defence, the said three months had elapsed and no court had been held from which could have obtained leave to take additional testimony.

This affiant further states, that, from information received by him from his solicitors and otherwise, he was led to believe that there would not be any term of this court held this winter, on account of the peculiar situation and condition of matters (which it might not be proper here to recite) in connection with the holding of this court under the late system, as to the person by whom the court should be held.

Affiant further states that he has used great diligence and been at large expense in endeavoring to obtain the names of witnesses in his behalf in this case, and that he expects to obtain their names and their testimony by the next term of this court.

That this affiant does not believe he can try this case in its present condition, as to testimony, safely and with a full showing as to his defence. That he is informed by his solicitors, and believes it to be true, that he has a good and meritorious defence to the bill in this case and that the justice and right of the cause is with him. That he
226 make' this application not for delay, but that he may have a full and complete investigation of his defence, and that justice and right may be done in the premises.

JNO. A. C. HORN.

Sworn to and subscribed in open court, this 15th Jan'y, 1870.
N. W. TRIMBLE, *Clerk, &c.*

Filed January 15th, 1870. N. W. Trimble, clerk.

Order continuing cause.

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

SATURDAY MORNING, *January 15th*, 1870.

WILLIAM LOCKHART AND WIFE, AND OTHERS, complainants, *vs.* JOHN A. C. HORN, AS EXECUTOR OF JOHN HORN, deceased, and others, defendants.	No. 16.

In this the complainants come by their solicitors, and the defendant Horn also comes by his solicitors; and the defendant Horn, by his solicitors, moves the court for a continuance of this cause until
227 the next term of this court and submitted a showing in writing in support of said motion; and, said motion being fully argued, and being considered by the court, the same is granted. And on motion of said Horn it is further ordered by the court, cause being shown, that he have until the next term of this court to take additional depositions in this cause. And this cause stands continued until the next term of this court.

* * * * * * *

Affidavit of S. J. Cumming.

In the circuit court of the United States at Mobile, Alabama.

LOCKHART AND WIFE, AND OTHERS,
vs.
JNO. A. C. HORN, AS EX'OR, AND OTHERS,
def'd'ts.

Personally appeared in open court S. J. Cumming, who, being duly sworn, on oath saith that the defendant Horn is not ready for trial in this case for the following reasons:

1st. On account of the absence of the depositions of one A. R. Shephard, who is a material witness for said Horn in this case; that before the last term of this court a commission and interrogatories were issued from this court to take the depositions of said Shepard,
228 the residence of said Shephard being in Louisville, Kentucky; that before said depositions were taken, said Shepard removed from Louisville to some place in Alabama, and from information received from said Shepard he had moved to Newbern, or near Newbern, Ala. That affiant has written to said Shepard several times as to his precise place of residence, and when and where his depositions might or could be taken, and has not, up to this time, received any answer from said Shepard, or any certain information as to his precise whereabouts, so that his depositions might be taken. That said Shepard, as this affiant is informed and believes from the information to be true, is a contractor on the railroad commonly called the Forest Railroad, being the road running or to run from Selma, in Ala., to Memphis, in Tennessee. That the defendant Horn, and this affiant as his solicitor in this case, has used constant endeavors by writing and otherwise to find out the residence and whereabouts of said Shepard, but up to this time has failed. That by said Shepard he will prove as follows (or to the following effect:) That, on the day before or two days before the testator, John Horn, died, said Shepard was at the house and residence of said
229 testator, and had a conversation with him on business; that said Shepard proposed to sell to testator certain land lying near testator's land; that testator declined purchasing said land, and assigned as a reason for declining the purchase that he had made a will and in and by said will had given his (testator's) plantation to his son, John A. C. Horn, the defendant in this case; that he (testator) having only one son intended that his son (the def't) should have his plantation after his death, and had so provided in his will; that, if he, Shepard, wished to sell said land, he had better go to his (testator's) son, John, (the def't,) and perhaps he could sell it to him. That he (testator) would not probably live long, being an old man, and that a piece of ground six feet by four would be all that testator would need. The said def'd't and this affiant expects to have the depositions of said Shepard in this case by the next term of this court; and affiant believes said evidence is material for the def'd't Horn on the hearing of this cause.

2nd. This affiant further says, that, from information received, he had reason to believe, and did believe, that there would not be any session of the United States court held in Mobile, at the regular April term of said court, and that affiant so informed his client, the defendant
230 John A.C. Horn. That affiant was absent from his home and office and attending a court at Evergreen, Conecuh Co., Ala., when he received a telegram informing affiant that this court was in session, and affiant immediately by the first train came to the city of Mobile to attend

to said case. That at the time said telegram was received, affiant was between 50 & 60 miles away from his office, and had no possible means of procuring his papers and briefs, and important documents necessary for him to have in the defence of this case on the hearing thereof. That there is no communication either by railroad or by telegraph from this city or from Evergreen to the town of Camden, in Wilcox Co., where this affiant resides; and he had , and has not yet had, any opportunity of obtaining or procuring from his office, the papers, briefs, and documents aforesaid. And this affiant does not believe he can go to trial in this cause, and do justice to his client, in the absence of said papers, briefs, and documents.

That the grounds on which this affiant formed his belief that there would not be any session of this court at the regular term in this month, were as follows: That affiant was informed by publications in the public newspapers, that your honor, the present presiding judge of this
231 court, had very unfortunately received serious injuries by a collision or other accident on a railroad in Mississippi, and from information this affiant did not suppose that your honor would be able to hold this court at this term; and affiant had no better or other information on the subject until the present week while at Evergreen as aforesaid.

That, in Febr'y, 1870, affiant had a conversation with the Hon. W. B. Woods, (the judge of this circuit,) in the city of Montgomery, in which conversation his honor Judge Woods informed affiant that there was a clashing in the courts of his judicial circuit, and that consequently he would have to hold a special term of one of the courts of his circuit, and that he did not expect to hold the April term of this court at the regular term, but would hold a special term of this court. From these two facts your affiant was led to believe and did believe that there would not be any session of this court at the regular term thereof, and so informed his client, the said Jno. A. C. Horn.

That this affiant is the leading counsel in this case, having entire control thereof, the said defendant and this affiant living in the same town of Camden aforesaid.

232 That this cause is one of great importance, involving a large mass of depositions and many intricate and disputed propositions of law, as affiant believes; that the case could not be fully and properly gone into without counsel for the def'd't Horn having time and opportunity to examine the evidence in the cause, and prepare for a discussion of the same, and for a thorough examination thereof.

That this application is not made for delay, but that justice and right may be done in the cause. Affiant believes that he will be ready for the hearing of this cause at the next term.

S. J. CUMMING.

Sworn to and subscribed in open court, this 15th April, 1870.

N. W. TRIMBLE, *Clerk.*

Filed April 15th, 1870.

N. W. TRIMBLE, *Clerk.*

Agreement of counsel as to taking depositions.

In circuit court of U. S., 5th circuit.

LOCKHART AND WIFE ET ALS.
vs.
JOHN A. C. HORN ET ALS. } In equity.

In this cause it is agreed by the counsel of the complainants

233 and of the defendants that all depositions taken in said cause or hereafter to be taken, shall be taken upon interrogatories to be served on the opposing parties or their counsel, and upon commission to be issued thereon by the clerk of said circuit court.

L. GIBBONS,
Of Counsel for Def't Horn.
BOYLES & MORGAN
Sol's for Compl'ts.

APRIL 16, 1870.

Filed April 16th, 1870.

N. W. TRIMBLE, *Clerk.*

Affidavit for continuance.

United States circuit court at Mobile, Ala., Dec'r term, 1870.

WILLIAM LOCKHART ET AL.
vs.
JOHN A. C. HORN, AS EX'OR, ET AL. } In chancery.

In this cause at this term the def'd't John A. C. Horn, comes into court and says, that he is not ready for trial, and moves for a continuance of this cause, and states the following grounds for said motion:

1st. The absence of the depositions of A. R. Shepard, a material witness for said Horn. The facts which he expects to prove by said Shepard are set out in a former statement made by this defendant, and
234 which is on file in this case, and which he refers to; that the first commission and int'ys sent out to take the depositions of said Shepard were lost in the mail, as defendant is informed and believes, and they have never been heard from by defendant or his solicitors, since they were mailed, and have not been returned to this court; that, after many and vain endeavors to find the first commission and interrogatories, this defendant, by his solicitors, filed a new set of interrogatories to said Shepard by permission of the court, and a new commission was sent out to take the depositions of said Shepard in amply sufficient time to have been executed and returned. That shortly before this term of this court, defendant's solicitors received a letter from the commissioner appointed to take said depositions, stating that said Shepard was absent from the State, and on his return, which was shortly expected, said commissioner would at once execute and return the commission; that it has not yet been returned; that the testimony of said witness is very material to this defendant on the hearing of this cause, and he cannot prove the same facts by any other witness within the knowledge of defendant.

235 2nd. On account of newly discovered evidence; that since the first day of December, 1870, and too late to take depositions for this term of the court, this affiant has discovered very *im*material evidence in his cause, as he is informed by his solicitors; that the newly discovered witness is one Leonidas L. Bryan, one of the defendants in this cause; that by said Bryan he expects to be able to prove that the complainants in this cause were each and all of them, severally represented by attorney on the contest of the will of the deceased, John Horn, in the probate court of Marengo Co., Ala., in 1858, and had a full hearing on said contest. He further expects to prove by said Bryan that all of said complainants were represented by their attorneys on the partial settlement of said estate in the probate court of Marengo Co., Ala., in May, 1860, and contested said settlement.

He further expects to prove by said Bryan that the complainants had actual notice of the final settlement of said estate of John Horn, made in the probate court of Marengo Co., Ala., in May, 1864, by this defendant as executor of said John Horn; that communications were open and correspondence passed between Ala. and Texas, up to and after the time of said final settlement. He further expects to prove
236 by said Bryan that the complainant Willam Lockhart stated to said witness, that he, Lockhart, had gotten the witnesses Charles Burrell and James Madison to swear what he wanted them to swear, and that they would swear whatever he, Lockhart, wanted them to in this cause; that Mrs. Nabors, one of the defendants in this cause, stated to said Bryan that she would swear to anything in this cause, whether true or not, in order to burst the defendant Horn; that Fannie L. Bryant, one of the defendants, said that they (meaning herself and Mrs. Nabors) had Mrs. Nabors' depositions fixed up so as to corroborate the depositions of said Fannie. Both, said Fannie L. and said Mrs. Nabors are witnesses for the complainants, and testified in their behalf, and, although they are parties defendant in this cause on the record, yet in fact they are parties in interest against this defendant.

This defentant further says that he cannot safely go into the trial of this cause without the testimony of said Bryan and Shepard, and that great injustice would be done him, as he believes and states, without said testimony; that he did not know that he could make by said Bryan the proof hereinbefore set out as to him until within
237 ten days before the commencement of this term of this court; that the said witness Bryan is one of the defendants of record in this case, and resides in the State of Alabama; that it has been with great difficulty that this defendant has obtained the information set forth in this application as to Bryan, and this in a great degree owing to the fact that said information was diligently kept back by the parties in interest; that this defendant expects to be able to have the depositions of said Shepard and said Bryan by the next term of this court.

That this application is not made for delay, but that full and complete justice may be done in this cause.

JOHN A. C. HORN.

Sworn to and subscribed in open court, Jan'y 6, 1871.

N. W. TRIMBLE, *Clerk, &c.*

Filed January 6th, 1871.

N. W. TRIMBLE, *Clerk.*

238 Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

FRIDAY MORNING, *January 6th, A. D.* 1871.

Court met pursuant to adjournment. Present, the Hon. William B. Woods, judge, presiding.

* * * * * *

Continuance.

WILLIAM LOCKHART AND WIFE *vs.* JOHN A. C. HORN, EX'R, &C. } No. 16.

This cause is continued until the next term of this court, upon writ-

ten affidavit of defendant John A. C. Horn, on file in said cause. It is ordered by the court that the defendant pay the costs of this cause which have accrued since the 1st of Dec., 1849.

* * * * * *

Order to publish testimony.

THURSDAY MORNING, *May 25th*, 1871.

Court was opened by the marshal, pursuant to adjournment. Present, the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States.

* * * * * *

WILLIAM LOCKHART AND WIFE, AND NARCISSA Lockhart, *vs.* JOHN A. C. HORN ET ALS. } On the equity side.

239 It is ordered that the testimony taken in this cause be published.

Motion to dismiss for want of jurisdiction.

In equity in the circuit court of the United States at Mobile, Ala.

WILLIAM LOCKHART & WIFE ET AL., COMPL'TS, *vs.* JOHN A. C. HORN, AS EX'OR, ET AL., DEF'TS.

The defendant John A. C. Horn, comes and moves the court here to dismiss the bill of the complainants, for want of jurisdiction apparent on the face of said bill, and for ground of said motion the defendant says: That the complainants in said bill are residents and citizens of the State of Texas, and that, as shown by said bill, two of the defendants in this cause, namely, William McPhial and Mary McPhial, are now, and were at the time of the filing of said bill, *were* also residents and citizens of the said State of Texas.

S. J. CUMMING &
L. GIBBONS,
Sol'rs for Horn, Def'd't.

Filed May 26th, 1871.

N. W. TRIMBLE, *Clerk.*

240 FRIDAY MORNING, *May 26th*, 1871.

Court met pursuant to adjournment. Present, the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States.

* * * * * *

WILLIAM LOCKHART AND WIFE, AND NARCISSA Lockhart. *vs.* JOHN A. C. HORN, EX'OR, ET ALS.

In this cause the defendants, by their solicitors, move to dismiss com-

plainant's bill for want of jurisdiction. Motion argued and submitted to the court.

* * * * * *

Motion to suppress depositions.

In equity in the circuit court of the United States, at Mobile, Ala.

WILLIAM LOCKHART AND WIFE, ET AL., COMPL'TS,
vs.
JOHN A. C. HORN, AS EX'OR, ET AL., DEF'TS.

The defendant John A. C. Horn, moves to suppress the depositions of Mrs. F. L. Bryan, a witness for complainants in this cause, on the following grounds:

1st. The insufficiency of the certificate of the commissioner who took her depositions.

2nd. The said certificate does not show that the answers of the said witness were "reduced to writing as near as may be in the
241 language of said witness."

3rd. The said certificate shows that the supposed depositions are merely a "statement of testimony" of said witness.

4th. The said certificate shows that the "testimony" of said witness was not put down by said commissioner, but only a "statement of testimony."

5th. The said certificate does not show that the witness answered the cross-interrogatories.

6th. The said certificate does not show that what purports to be the answers of said witness to said cross-interrogatories were reduced to writing by said commissioner.

7th. The said certificate does not show that the so-called answers of said witness to the cross-interrogatories, were read over to her or were *shown* to by her.

8th. The said certificate does not show that the depositions were subscribed by said witness.

The said defendant John A. C. Horn also moves to suppress the depositions of Mrs. Elizabeth P. Nabors, a witness for complainants in this cause, on the following grounds:

1st. The insufficiency of the certificate of the commissioner who took her depositions.

242 2nd. The said certificate does not show that the answers of the said witness were "reduced to writing as near as may be in the language of the witness."

3rd. The said certificate shows that the supposed depositions are merely a "statement of testimony" of said witness.

4th. The said certificate shows that the testimony of said witness was not put down by said commissioner but only a "statement of testimony."

5th. The said certificate does not show that the depositions were subscribed by said witness.

6th. The defendant Horn had no notice of the time and place of the taking of the depositions of said Elizabeth P. Nabors.

The said Horn moves to suppress the depositions William Lockhart, Sarah Lockhart, William McPhail, Mary McPhail, Narcissa Lockhart, James Madison, and Charles Burwell on the following grounds:

1st. The insufficiency of the certificate of the commissioner who took said depositions.

2nd. The said certificate does not show that the answers of the said witnesses were "reduced to writing as near as may be in the language of said witnesses."

243 3rd. The said certificate does not show that said witnesses or either of them answered the cross-interrogatories propounded to them.

4th. The said certificate does not sufficiently show, that what purports to be the answers of said witnesses to said cross-interrogatories were the answers of the witnesses to the same, the certificate not making any statement at all as to the answers to said cross-interrogatories.

5th. The said certificate does not show that the answers of said witnesses to the cross-interrogatories were subscribed by them.

6th. That said certificate does not show that the answers of the said witnesses to the cross-interrogatories were *shown* to by said witnesses.

S. J. CUMMING &
L. GIBBONS,
Sol'rs for Def't Horn.

Filed May 26th, 1871.

N. W. TRIMBLE, *Clerk.*

244 SATURDAY MORNING, *May 26th*, 1871.

Court met pursuant to adjournment. Present, the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States.

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WILLIAM LOCKHART AND WIFE, & NARCISSA Lockhart,
vs.
JOHN A. C. HORN, EX'OR, ET ALS. } No. 16.

This cause coming on to be heard, upon the motion of defendants to dismiss the bill filed in this cause for want of jurisdiction, and the motion to suppress complainant's depositions, it is ordered by the court that the latter motion be denied, and that the cause proceed to hearing upon the merits. Upon the motion to dismiss for want of jurisdiction the court reserves its opinion.

* * * * * * * *

245 *Commission.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W'M LOCKHART ET ALS.
vs.
JOHN A. C. HORN, E'X'OR, ET ALS.

To Jesse B. Shivers and Bush Jones, esq'r's, of Perry County, Ala., greeting:

Know ye that we, in confidence of your prudence and fidelity, have

appointed you, and by these presents do give you or any of you full power and authority to examine William B. Modawell as witness in a cause pending in our said court, wherein William Lockhart et als. are plaintiffs, and John A. C. Horn, ex'or, et als. are defendants.

And, therefore, we command you or any of you, that, on the of , 186 , you do cause the said William B. Modawell to come before you or either of you, and then and there examine him on oath, as a witness in the cause aforesaid, on the interrogatories and cross-interrogatories hereto annexed; and that you or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals or
246 the seal of any one of you, into our said circuit court with all convenient speed.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, the 2nd Monday of April, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued the 19th day of October, 1868.

Attest:

[SEAL.]

N. W. TRIMBLE,
Clk C. C. Sou. Dist. Ala.

Interrogatories to W. B. Modawell.

In the circuit court of the United States at Mobile, Alabama. In chancery.

WILLIAM LOCKHART AND HIS WIFE, SARAH Lockhart, and Narcissa Lockhart, comp'lts,
vs.
JOHN A. C. HORN, AS EXECUTOR OF JOHN Horn, dec'd, and others, defendants.

Interrogatories to be propounded to W'm B. Modawell, who resides in Marion, Perry County, Alabama, and who is a material witness for defendant in the above-stated cause, the answers to which, when taken and reduced to writing, will be read as evidecce on the
247 trial of the above cause on behalf of defendant, John A. C. Horn.

Int. 1st. Are you acquainted with the parties to the above suit? How long have you known them?

Int. 2nd. Did you or not know Jno. Horn, late of Marengo County, Alabama, in his life-time, and how long were you acquainted with him?

Int. 3rd. What was the character of your acquaintance with said Jno. Horn; was it intimate, or otherwise?

Int. 4th. Where did you reside during your acquaintance with said Jno. Horn; and what was the distance between the places where you and said Horn resided?

Int. 5th. Were you and are you now acquainted with the family of said Horn, and how long have you known them? Give the names of each one of the children of said Horn.

Int. 6th. Were you ever heretofore in the employ of said Horn; if yea, what business were you engaged in when you were so employed, and at what place or places were you so engaged?

Int. 7th. What is your occupation or profession at this time; and how long have you been engaged in said profession; and where have you resided during the time you have been so engaged?

248 Int. 8th. Have you or no' heretofore rendered any, and what, professional services for the said Jno. Horn; if yea, what were said services? If in your answer you say you wrote a will for said Horn, then state when and where you wrote said will, and at whose request did you write said will. Who attested said will as witnesses, and at whose request did said witnesses so attest it? Who was present when said will was written? Who dictated said will? Did or no' any other person than John Horn, dictate any portion of said will; if yea, who were they?

Int. 9. Did you or no' have any conversation with the said Jno. Horn, in regard to the writing of his will, prior to the making and signing of the same; if yea, when and where did you have said conversation or conversations? State what was said in said conversations. Did or no' said Horn inform you, previously to making said will, how he intended to dispose of his property? If yea, state what he said as to the disposition he intended to make of it. Did he or not give any and what reasons for the same?

Int. 10. Have you or no' ever heard the said John Horn speak of his son, Jno. A. C. Horn? Have you heard the said John Horn speak of his sons-in-law; if yea, *was* such declarations made in refer-
249 ence to *to* the disposition of his property, by will or deed? If yea, state to the best of your recollection, what the said Jno. Horn said in relation to the same.

Int. 11. Was Jno. A. C. Horn present when you prepared the will of his father? Did the said Jno. A. C. Horn direct or dictate any and what portion of said will? Did any of the children of said Jno. Horn express any and what, dissatisfaction as to the disposition which said Horn made of his property; if yea, who was it, and when and where was such dissatisfaction so expressed? State fully and particularly all you may know about this matter.

Int. 12. Were you professionally engaged in the settlements made by Jno. A. C. Horn, of his executorship of his father's estate? If yea, where *was* said settlements made? Were there any and what attorneys representing the legatees of said Horn, and in what contests and settlements were they represented? Give the names of said attorneys.

Int. 13. State, if you know, what became of the negroes that Mrs. F. L. Bryan drew on the division of the negroes belonging to the estate of said John Horn, dec'd. Into whose possession did they go, and
250 who managed, controlled, held, and worked them up to the time they became free by emancipation?

Int. 14. If, in your answer to the twelfth interrogatory, you have given the names of the attorneys contesting the said will and the settlements of John A. C. Horn, as executor of said John Horn, state which of said attorneys are now dead, and which living, and in what year they died.

Int. 15. Do you know or can you set forth any other matter or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. J. CUMMING & L. GIBBONS,
Sol's for John A. C. Horn.

The defendant John A. C. Horn, suggests the names of Jesse B. Shivers and Bush Jones, esq'r's, as commissioners, to take the deposi-

tions of the said witness W'm B. Modawell. Said Jesse B. Shivers and Bush Jones reside in Perry County, Ala.

S. J. CUMMING & L. GIBBONS,
Sol's for John A. C. Horn.

251 Filed September 15th, 1868.

N. W. TRIMBLE.

Marshal's return.

Rec'd, M. O. Sept. 18th, 1868, and executed same day by serving copy on W'm Boyles, esq.

R. W. HEALY,
U. S. Marshal.
By J. J. WATSON,
Deputy.

Cross-interrogatories to W. B. Modawell.

WILLIAM LOCKHART ET ALS.
vs.
JOHN A. C. HORN ET ALS.

In circuit court of the United States, sitting in Mobile, Alabama.

Cross-interrogatories to William B. Modawell, a witness examined in chief by the respondants.

Cross-int. 1. If you say that you wrote a will for John Horn, tell how long before his death you wrote it. Did you not write more than one will for him? How many did you write, and when did you write them, and at what intervals? Or, if you know that he ever had another will prepared than the one you wrote, tell who prepared it, and whether it was ever executed. Did you retain a copy of the will or wills that
252 you wrote; and, if so, what did you do with it? Did you retain notes or the draft you made of the will? If so, tell what you did with them, and where they are now. Can you now or could you at any time recite from memory the exact contents of the will you prepared for John Horn?

Cross-int. 2. At the time that the probate of the copy of John Horn's will was contested in the probate court of Marengo County, were you not the witness upon whose testimony said copy was admitted to probate? Did any other witness testify to the contents of said will? Were you not, also, the attorney of the proponent of said will, and employed to secure the probate thereof? What fee did you get in that case, and how much of it was contingent or conditioned to be paid if you should be successful in the case? How do you know what parties opposed to the probate of said will were represented by attorneys on the contest thereof? Which of the children of John Horn were present at said contest? Where did each of them live? Which of them were married women at that time, and which of them were
253 under age? If you say that attorneys represented each of the children on that contest, tell what attorneys represented each of said children. Do the records of the court speak the truth as to this matter? Do you know that each attorney who undertook to represent each of such children on that contest had authority from such children to represent them? On the contrary, do you not know that some of the

children of John Horn, then living in Texas, had no knowledge of said contest until it was over? In whose names were the issues made up on which said will was contested? Were the issues in writing? If so, where are they?

Cross-int. 3. What has become of the deposition of Mrs. Horn, widow of John Horn, that was taken to be used on said contest? Do you not know where it is? Who last had possession of it?

Cross-int. 4. Are you not the principal counsel and managing agent of John A. C. Horn, in preparing the evidence for his defense in this case? Have you not conversed fully and freely with the four negro witnesses in Marengo and Perry Counties, to whom the defendant John A.
254 C. Horn has propounded interrogatories in this case? Give the names of said negroes? How long have you known them? When did any and which of them go to Marion, Alabama, to converse with you about this case? How often have any of them and which of them been to Marion to converse with you about this case; or how often and at what times and places have you held conversations with said negroes, or with others in their presence, touching the facts of this case, or touching the evidence they would give in this case? In each of the conversations you have so had with said negroes, or with others in their presence, tell all that was said by each and all of the persons present, to the best and uttermost of your knowledge, that had any reference to this case. Did not some person recite or report to said negroes, or some of them, what it was expected or hoped they would swear to in this case? Were not the various conversations in reference to which said negroes have been interrogated as having been held with Mrs. Bryan, and Mrs. Horn, and John Horn, all gone over in the presence of said negroes, and was this not done in order to prepossess their minds
255 with the particular facts that it was desired or expected they would prove? Do you not know these negroes well enough to know that they have not the intelligence to detail conversations relating to such business matters as have been the subjects of dispute and controversy amongst the family of John Horn, before and since his death? Do you not know, also, that neither John Horn, nor Frances L. Bryan, nor Mrs. Horn would have made confidents or advisers of their negroes, or any of them, touching these matters of business? Did you ever have any conversation with either of said negroes concerning these matters until after the bill was filed in this case, or until it was about to be filed? Did you not then advise John A. C. Horn that it would be necessary to examine said negroes, and that it would be best or expedient to have them refreshed in their memory as to the various conversations they were expected to prove against Mrs. Horn and Mrs. Bryan? Do you not know that he set about to do this thing, and have you not been present when it was being done? Do you deny having ever had a conversation with said negroes, or either of them, touching these matters; and, if you had such conversation, why did you have it?

256 Cross-int. 5. Was there any peculiar mark or indication upon or about the will of John Horn, which you prepared, that would enable an illitterate negro to distinguish it from any other paper written and folded in common style; if so, what was that mark, and why was it put upon said paper?

Cross-int. 6. In the lifetime of John Horn, or since his death, did you ever go into or see into a trunk or box in which he kept his will? If so, did he not keep many other papers in that place, and were not many of them similar in appearance to the will that you had prepared?

Cross-int'y 7. If you say that the children of John Horn were represented on any of the settlements made by the executor of John Horn, by counsel, tell which of the children were so represented, by whom, and on what particular settlement they were so represented, and whether they were personally present; and tell how you know that the person who represented them had authority to do so. Do you not know that, at the time of the pretended final settlement made by John A. C.
257 Horn, as executor of John Horn, during the recent war. all of the children of John Horn, except John A. C. Horn, F. L. Bryan, and E. P. Nabors, lived in Texas, and that, in consequence of the war and the occupation of the country between Alabama and Texas by hostile armies, it was not possible to send notices by mail to Texas, from Alabama? Do you not know that the children of John Horn, who were in Texas at the time of said settlement, did not have notice of said settlement? Was not a notice published in the county newspaper of Marengo County the only notice of said settlement that was given or attempted to be given by the executor or judge of probate?

X-int. 8. Do you not know that the money decreed to F. L. Bryan in the partial settlements of the estate was withheld from her by the said John A. C. Horn, and was never, in fact, paid to her? Do you not know that John A. C. Horn worked his negroes and his mother's and Mrs. Bryan's for several years, on the lands left by John Horn, including the part set off to Mrs. Horn for dower? What was the reason why Mrs. Bryan continued to live with her mother? Was she not at that time seperated from her husband? Had not her father
258 placed money (and how much) in the hands of John A. C. Horn to aid her in a litigation with her husband, touching his removal from the trusteeship of her seperate estate? Did not John A. C. Horn, after his father's death, become her surety on an injunction-bond in a suit against her husband? If their relatives were bad or unfriendly, or if he suspected that she had destroyed her father's will, can you explain why John A. C. Horn would become Mrs. Bryan's surety on said bond?

Cross-int. 9. What reason did John Horn give you for giving to his son, John A. C. Horn, so much the advantage of his other children in the division of his estate? Did he not state as a reason that his son had agreed to come and live with him and take care of him and his business in his old age? Was not his son then a man of family, and did he not have a valuable estate and property in Wilcox County, or elsewhere in Alabama? When did you last see John Horn before his death? Did he not then complain that John A. C. Horn had not kept his promise to live with him, and take care of his property?

259 Cross-int. 10. Have you told all that you know that will benefit the complainants in this cause; if not, please to state the same fully and particularly.

JNO. T. MORGAN &
BOYLES & OVERALL,
Sol'rs for Compl'ts.

Filed October 17th, 1868.

N. W. TRIMBLE, *Clerk.*

STATE OF ALABAMA, *Perry County:*

I, J. B. Shivers, the commissioner named in the annexed commission, do hereby certify that in pursuance thereof, I caused the witness W'm B. Modawell, named in said commission, to come before me, at my office

in the town of Marion, on the 30th day of October, A. D. 1868, being the time and place appointed by me, and that he, the said witness, being then and there first duly sworn by me to speak the truth, the whole truth, and nothing but the truth, and also to make full and true answers to the interrogatories and cross-interrogatories hereto annexed, thereupon answered and deposed as follows, to wit:

260 To int'y 1st. I am acquainted with all the parties to this suit, except B. O. Nabors. I have known them about twenty-nine years.

To int'y 2d. I did know John Horn, late of Marengo County. I knew him from 1839 up to his death.

To int. 3rd. I was intimately acquainted with said John Horn.

To int. 4th. I resided in Marengo County, except one winter I lived in Mobile a few months. The distance I resided from said Horn was seven or eight miles.

To int. 5th. I have been acquainted with the family of said John Horn about twenty-nine years. The names of his children are Sarah, Narcissa, Priscilla, Frances, Mary, and John.

To int. 6th. I was in the employ of the said John Horn in the year 1840 as a clerk, in the town of Dayton, Marengo County, Ala., and afterwards I was employed by him to collect up notes and accounts he had due him in Uniontown, Perry County, Ala.

To int'y 7th. I am a practising lawyer and have been for about
261 seventeen years, and during this time I have resided in McKinley, Marengo County, except the last year I have resided in Union, Perry County.

To int. 8th. I have rendered the said John Horn professional services during his life. I wrote some deeds for him. I wrote a will. I wrote the said well in 1857, at his residence in Marengo County. I wrote the said will at the request of the said Horn. D. C. Alexander and myself attested it as witnesses, at the request of the said Horn. Frances L. Bryan, John A. C. Horn, the testator, were present with me when I wrote said will. The said John Horn, the testator, dictated the said will himself and no other person dictated any portion of it.

To int'y 9th. I had three or more conversations in regard to the making of his will prior to the making and signing of the same. I cannot remember the precise time of all the conversations upon that subject; but I do remember of having one of the conversations with him on the 24th of September, 1856. I had said conversations with him at his house, at his blacksmith shop, and at my law-office in McKinley,
262 Ala. In these conversations the said John Horn did inform me how he intended to dispose of his lands in his will. He told me he intended to give the home-place to his son, John A. C. Horn, and that he intended to divide his other lands equally between his daughters. He said the reason' he intended to do this were that his son, John, had always been a good boy; that he, the said John A. C., had always been kind to him, the testator; that his daughters were all settled off and had lands; that Phillip J. Weaver had been trying to get his land and he did not want him to have it, and he knew that if he gave it to his son, John, he would not let him have it but keep it and do well upon it; that if the devil ever owed him a debt he had paid him off in sons-in-law.

To int. 10th. I have heard the said John Horn speak of his son and his sons-in-law, and that, too, in reference to the distribution of his property by will and by deed. I once wrote a deed for the said John Horn by which he gave his daughter Mary McPhail, some property. At the

time of signing this deed he told me that his sons-in-law were wild and improvident; that none were good managers; and in this
263 deed he desired to exclude the husband from any right to or control over the property. In the same conversation, he spoke of his son, John, as a prudent, safe, industrious man and a kind and dutiful son.

To int. 11th. John A. C. Horn was present when I wrote the will of John Horn. The said John A. C. Horn did not direct or dictate any portion of said will. Mrs. Frances L. Bryan did express dissatisfaction as to the disposition which said John Horn made of his property. This dissatisfaction was expressed on the night the will was written, at the residence of the said John Horn. After I got through writing the will she left the room, went into another room where her mother was. In a few minutes thereafter I went into the same room where Mrs. F. L. Bryan was and found her crying. I endeavored to quiet her, but she continued to cry while I was in the room, and expressed her dissatisfaction about the will.

To int. 12th. I was professionally engaged in the settlements made by John A. C. Horn of his executorship of his father's estate. The partial settlement was made in 1859; the final settlement was
264 made in 1864. I give these dates merely from recollection—without any papers to refresh my memory. Messrs. Clark & Terrill, attorneys, represented the legatees on the partial settlement; also Robert D. Hart, esquire. On the final settlement, Robert D. Hart was attorney for legatees.

To int. 13th. The negroes drawn by Mrs. F. L. Bryan from her father's estate went into the possession of her mother, who worked and controlled them until the said negroes became free.

To int. 14th. Messrs. Clarke and Terrill are living. Robert D. Hart is dead; he died in 1864, or 1865, is the best of my recollection.

To int 15th. I am unable to remember anything further of benefit to the parties, except that John A. C. Horn, as executor, collected about seven thousand dollars, in confederate money, and a copy of John Horn's will is hereto attached, marked Exhibit A.

Answers to cross-interrogatories.

To cross-int. 1st. I wrote John Horn's will eight or nine months before his death, to the best of my recollection. I did not write but the one will for him. I do not know that he ever had any other prepared or executed. I did not take a copy of the will at the time I wrote it. I did not retain notes at the time. I can now and could at any
265 time since writing the said will, recite the exact contents of the same except the advances charged against the heirs in said will, the precise amount of which I do not now remember. But I do now remember that the advances charged up in said will ranged from about sixteen hundred dollars to between eight and nine thousand dollars.

To cross-int. 2nd. D. C. Alexander and myself were the witnesses, upon whose testimony a copy of John Horn's was admitted to probate in Marengo County. Both Alexander and myself testified to the contents of said will upon said trial. I was one of the attorneys of the proponent of said will to secure the probate thereof. I received a fee of one thousand dollars from said proponent. No part of said fee was contingent or conditional. I heard R. D. Hart, esquire, say that he and his partner, James D. Webb, represented all the lega-

tees on the probate of said will, except John A. C. Horn, who was the proponent. Mrs. F. Bryan and Mrs. Narcissa Lockhart were present at the trial, and this is the only way I know anything about who was represented on the contest of said will. Mrs. Bryan lived in Marengo County, and Mrs. Narcissa Lockhart lived in Texas. Webb and
266 Hart were the attorneys who represented the contestants upon the trial. I don't know that the attorneys who represented said children upon that contest had authority from such children to represent them only from the fact that Messrs. Webb and Hart did appear for them, and that Hart told me that they represented them all; and he, Hart, also told me that they all had agreed to pay him the same fee. I do not know whether the records of the court speak the truth as to this matter or not. I do not know that some of the children of John Horn, then living in Texas, had no knowledge of said contest until it was over. I do not know in whose names the issues were made up, except I remember some of the subpœnas for witnesses were issued in the name of John A. C. Horn vs. E. P. Dumas and others. I don't remember whether the issues were in writing or not. If in writing I do not know where they are.

To cross-int. 3rd. I don't know what has become of the deposition of Mrs. Horn; I do not know where it is. The last time I saw it it was in the hands of W'm M. Brooks, esquire, and he was making a motion to suppress it just before the trial for the probate of said will.

267 To cross-int. 4th. I am not the principal counsel of John A. C. Horn in preparing this case; S. J. Cumming, esquire, of Camden, is his principal counsel. I am an assistant attorney. I have only had conversation with one of the four negro witnesses. I know the names of only two of them, to wit, Gip, (a colored man,) and Jennie, (a colored woman.) I have known Gip twenty-nine years; I have known Jennie ten or twelve years. None of them ever came to Marion to converse with me about this case. Gip came to Marion last summer to bring my horse, and he is the only one of the four that I have seen in Marion since I have been living here. I conversed with Gip at his residence and at McKinley about this case two or three . Gip told me, in each of conversations, that his old master, John Horn, had frequently told him that he intended to dispose of his property as he did dispose of it. He told me also that he had heard John Horn speak of his sons-in-law and his son, John A. C. Horn, about in the same manner as I have stated in my answer to the tenth direct interrogatory. There was no one present at either of the conversations I had with Gip. Gip also told me that he had heard that Jennie would give in evidence tending very strongly to show that Mrs. F. L. Bryan destroyed
268 the will of her father. I have given about the substance of what Gip said in each conversation. No person has ever recited or repeated to said negroes or either of them in my presence or in my hearing what it was expected or hoped they would swear in this case. I know of no conversations held with Mrs. Bryan, Mrs. Horn, and John Horn, which were gone over in the presence of said negroes by any person or persons for any purpose. I know Gip and Jennie do possess sufficient intelligence to detail conversations relating to such business matters as have been the subject of controversy amongst the family of John Horn before and since his death. I don't remember the names of the other colored witnesses. I only now remember that John A. C. Horn told me he had others besides Gip and Jennie. I do not know that John Horn, Frances L. Bryan, and Mrs. Horn would not have made confidants

of such negroes as Gip and Jennie. I do not now remember of conversing with Gip about these matters before this bill was filed. I did advise John A. C. Horn to see such negroes as knew any facts that would benefit him and such as had sufficient intelligence to testify and ascertain from them what they would be able to prove before we filed
269 interrogatories to them. John A. C. Horn told he did go to see them. I was not present with them when he did go to see them. and I again state that I never had any conversations with any of them except Gip, touching this business.

To cross-int 5th. There was no peculiar mark or indication upon or about the will of John Horn which I prepared that would enable an illiterate negro to distinguish it from any other paper written and folded in common style, unless that mark or indication was made after it left my hands on the day it was signed.

To cross-int. 6th. I know nothing of the matters inquired of in this interrogatory.

To cross-int. 7th. Messrs. Clark & Terrill and R. D. Hart, esq., represented the legatees on the partial settlement, and R. D. Hart represented them on the final settlement. W'm McPhail and W'm Lockhart, sons-in-law of John Horn, were present on the partial settlement. Beyond the fact that these attorneys appeared, and said they were employed to contest said settlement, I know nothing that would tend to show that they were employed. I do not now remember that R. D. Hart was present when the final settlement was completed, but he did
270 appear on a former day and examined the accounts and vouchers, and said final settlement was continued once at his request. At the time the final settlement, and during the recent war, all the children of the said John Horn resided in Texas, except John A. C. Horn, F. L. Bryan, and E. P. Nabors. But it is not true that notices could not be sent from Alabama by mail. I do not know that the children of John Horn did not have notice of said final settlement, nor do I know that the notices published in the county newspaper of Marengo County was the only notice given or authorized to be given.

To cross-int. 8th. I do know that the money decreed to F. L. Bryan on the partial settlement, or a portion of it, was held by John A. C. Horn, at her request, for two purposes, to wit: To pay the expenses of some law-suits between Mrs. Bryan and her husband, and to keep it out of the hands of her husband, L. L. Bryan. I do not know whether John A. C. Horn has paid Mrs. Bryan all of said money or not. I do not know that John A. C. Horn worked his mother's negroes or Mrs. Bryan's negroes for several years. John A. C. Horn and his mother farmed
271 in partnership. John A. C. Horn worked his own negroes, and Mrs. Horn worked hers and Mrs. Bryan's against them. There was eighty acres of Mrs. Horn's dower included in this joint farm. Mrs. Bryan was separated from her husband, is the reason she lived with her fathers. From the time of separation up to his death, and, after his death, she continued to live at the same place with her mother, which place was carried on by her mother and John A. C. Horn in partnership, as I before stated. I know of no money which John Horn placed in the hands of John A. C. Horn to said Mrs. Bryan in her litigation with her husband. John A. C. Horn did become Mrs. Bryan's surety on an injunction bond against her husband. At the time he signed the injunction bond he knew he would have money in his hands of Mrs. Bryan's to save him harmless. He also believed that he would be able to sustain his father's will. He also believed that Mrs. Bryan's

husband had treated her badly, and the fact of his being her only brother induced him to sign this bond, and to do her many other favors, notwithstanding he believed all the time she destroyed her father's will.

This is the way I explain why he would become her surety.

272 To cross-int. 9th. I have stated the reason that John Horn gave me for giving his son, John A. C., the advantage in his will in my answers to the 9th and 10th direct interrogatories. He, the said John Horn, did not state to me that his son, John, had agreed to come and live with him and take care of him in his old age. John A. C. was a man of family at the time, and resided in Wilcox County. His wife's parents had a plantation and negroes, which I have never seen, nor can I put any value on. John A. C. Horn had property of his own at the time, but I did not know how much. I saw John Horn often between the making of his will and his death, but do not remember the last time I saw him. He never did complain to me that John A. C. Horn had not complied with his promise to live with him and take care of his property.

To cross-int. 10th. I have stated all I know that benefit the complainants.

W. B. MODAWELL.

And I, Jesse B. Shivers, the commissioner in said commission named, hereby certify that the foregoing answers were read over to him by me, and subscribed by him by his signing his name thereto in my

273 presence, and that the answers of said witness were taken down by me in his own words, and that I am not of counsel or kin to either party to said cause, or interested in the event thereof; and I further certify that said answers of said witness were taken at the time and place mentioned in the foregoing caption; and I further certify that I have personal knowledge of the identity of said witness.

Given under my hand and seal, this the 30th day of October, A. D. 1868.

J. B. SHIVERS, *Comm'r.* [L. S.]

I, John Horn, of the county of Marengo, and State of Alabama, being of sound mind and disposing memory, and knowing the uncertainty of life and the certainty of death, do make and publish the following as my last will and testament, to wit:

I give and bequeath to my beloved wife, Rebecca Horn, all my property, both personal and real, of whatsoever description that I may be seized and possessed of at the time of my death, to have and to hold the same during her natural life. I give and bequeath to my son, John

274 A. C. Horn, my home tract of land, containing 720 acres, more or less, together with all the improvements thereon, to have the same absolutely at the death of his mother. I give and bequeath to my daughter Frances L. Bryan, my negro girl named Alla, to have and to hold the same to her seperate use at the death of her mother. I give and bequeath to my daughters Narcissa M. Lockhart, Sarah A. Lockhart, E. P. Dumas, Mary R. McPhail, and Frances L. Bryan the following land, which is detached from my home-place, containing 240 acres, more or less, to be sold by my executor on such terms as he may think best, and the proceeds divided equally among my said daughters.

At the death of my beloved wife I will and bequeath all the balance of my property to all my children, to wit: John A. C. Horn, Sarah A. Lockhart, Narcissa M. Lockhart, Mary R. McPhail, E. P. Dumas, and

Frances L. Bryan, to be divided equally between them. If my daughter E. P. Dumas, should die and leave surviving her no child or children, it is my will that her portion of the property should go back to her brother and sisters, and her present or any future husband shall have no part of it. It is my will that, in the final distribution of my estate, *that* the advances that I have heretofore made to my
275 children shall be charged up to them in said distribution; and I hereby charge to my children, as advances heretofore made, the following sums, to wit: John A. C. Horn, $1,650.00; Frances L. Bryan, $8,250.00; Narcissa M. Lockhart, 3,400.00; E. P. Dumas, 8,617.00; Sarah A. Lockhart, 4,400.00; Mary R. McPhail, 6,300.00. I hereby appoint my son, John A. C. Horn, executor to this my last will and testament.

(Signed) JOHN HORN.

Witnesses:
W. B. MODAWELL.
D. C. ALEXANDER.

"Exhibit A."

Commission.

UNITED STATES OF AMERICA.

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

W'M LOCKHART ET ALS.
vs.
JOHN A. C. HORN, EX'C'R.

To W'm F. Glover and R. H. Clarke, esqrs., greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you and by these presents do give you or any of you, full power and authority to examine William E. Clarke, as witness
276 in a cause pending in our said court, wherein William Lockhart et als. are plaintiffs, and Jno. A. C. Horn, exc'r, et als. are defendants.

And therefore we command you or any of you, that, on the 5th day of February, 1869, you do cause the said William E. Clarke to come before you or either of you, and then and there examine him, on oath, as witness in the cause aforesaid, upon the interrogatories and cross-interrogatories hereto annexed, and that you or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals or the seal of any one of you, into our said circuit court, with all convenient speed.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of circuit court, the 4th Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued the 1st day of Jan., 1869.

Attest:

[SEAL.]

N. W. TRIMBLE,
Clk C. C. Sou. Dist. Ala.

277 *Interrogatories to William E. Clarke, witness for defendant.*

In the circuit court of the United States, at Mobile, Alabama.

WILLIAM LOCKHART AND HIS WIFE, SARAH Lockhart, and Narcissa Lockhart, complainants.
vs.
JOHN A. C. HORN, AS EXECUTOR OF JOHN HORN, deceased, and others, defendants.
} In chancery.

Interrogatories to be propounded to William E. Clarke, a witness for the defendant Horn, in said cause; the answers thereto to be read in evidence in said cause.

Said witness resides in Demopolis, Marengo County, Ala.

1. Interrogatory 1. State whether or not you know the parties to the above-stated cause, whose names are set out above; and, if not all, which of them do you know?

2. Interrogatory 2. State whether or not you were at any time the attorney of Mrs. Craighead, as executrix or administratrix of one J. B. Craighead, her husband, late of Marengo County, Alabama. If yes, did you or not at any time, as such attorney of Mrs. Craighead, as
278 ex'x or adm'x, pay to the defendant John A. C. Horn, as executor of John Horn, deceased, any money. If yes, state when you paid said Horn said money; state how much money you paid him; state what kind of money you paid him, and, if you know, also state what said money was paid for; if it was for property purchased from the estate of said John Horn by said J. B. Craighead, state what kind of property, and what property. When did said J. B. Craighead die? Please answer the foregoing questions as fully as you can now remember.

3. Interrogatory 3. If you know, state what kind of money was the currency of the State of Alabama in the year 1862, and up to the spring of 1865. If there was any other kind of currency in circulation in the State of Alabama, in the fall of 1862, except confederate currency, please state what other currency. What was the comparative value of gold and confederate treasury notes in the month of October, 1862. State their comparative value on the eighth day of October, 1862, if you can.

4. Interrogatory 4. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties
279 in this issue in this cause, or either of them, or that may be material to this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. J. CUMMING & L. GIBBONS,
Solr's for J. A. C. Horn.

The defendant Horn, suggests the names of William F. Glover and R. H. Clarke, both of Demopolis, Marengo County, Ala., as suitable persons for commissioners to take the depositions of said witness William E. Clarke.

S. J. CUMMING & L. GIBBONS,
Sol'r's for Horn.

Rec'd M. O., Dec. 4th, 1868, and executed Dec. 5th, 1868, by serving copy on W'm Boyles, esq.

R. W. HEALY,
U. S. Marshal.
By J. J. WATSON,
Deputy.

Cross-int'y's to W. J. Clarke.

In the circuit court of the United States, at Mobile, Alabama.

280 WILLIAM LOCKHART AND HIS WIFE, AND OTHERS, compl'ts,
vs.
JOHN A. C. HORN, AS EXECUTOR OF JOHN HORN, deceased, and others, def'ts.

Cross-interrogatories to W'm E. Clarke, esq'r.

Cross-interrogatory 1st. Do you know J. B. Craighead became indebted to John A. C. Horn, executor of John Horn, deceased? Was it for property purchased by said Craighead which belonged to the estate of said John Horn. If yea, please state, if you can, at what time the purchase was made. When was the debt due from said Craighead contracted; what was the date of the note or notes given by said Craighead to said John A. C. Horn?

2nd. Please state, if you can, whether Confederate States treasury notes was the only kind of money in circulation in Alabama, from the year 1862 to 1865?

MORGAN & LAPSLEY, &
BOYLES & OVERALL,
Sol's for Complainants.

STATE OF ALABAMA, *Marengo County:*

By virtue of the annexed commission, to me directed from the
281 clerk of the circuit court of the United States for the southern district of the aforesaid State, to take the deposition of William E. Clarke, in a certain cause pending in said court, wherein William Lockhart et als. are plaintiffs, vs. John A. C. Horn et als. defendants, I have caused the witness, who is personally known to me, to come before me at my office in the town of Demopolis, of the county and State aforesaid, on the 5th day of February, 1869, and, after causing him to be sworn to speak the truth, the whole truth, and nothing but the truth as a witness in said cause, he depones and answers as follows, to wit:

The answers of William E. Clark, a witness for the defendants in a certain cause now pending in the circuit court of the United States at Mobile, Alabama, wherein William Lockhart and his wife, Sarah Lockhart, and Narcissa Lockhart are complainants, and John A. C. Horn, as executor of John Horn, dec'd, and others are defendants, to interrogatories and cross-interrogatories hereto annexed.

Ans. to int. 1. I know William Lockhart, and think I know the other two complainants, and am acquainted with John A. C. Horn; don't know who are the other defendants.

282 Ans. to int. 2. The law firm of Clarke & Terrill, of which I was a member, were the attorneys of Mrs. Jane P. Craighead, as adm'x of James B. Craighead, dec'd, her former husband. As such attorney I paid John A. C. Horn, as executor of John Horn, dec'd, the balance due by said James B. Craighead in his life-time. I disremember the exact amount I paid, but, to the best of my recollection, it was between five thousand and six thousand dollars. It was the amount

due on James B. Craighead' note given for a portion of the land left by John Horn, the testator, and devised by his will to his children other than John A. C. Horn. I could tell the exact amount if I had access to Mrs. Craighead's accounts, which I have not. My recollection is that I made the payment some time in the fall of 1862. I paid said amounts in treasury notes of the "Confederate States of America," commonly called "confederate money." I can't describe the land for which said payment was made, but it is the land which adjoined the plantation of said Craighead on the east and, I think, northeast of his plantation owned by him at the time of said testator's death. James B. Craighead died in the summer of 1859, to the best of my recollection.

283 Ans. int. 3. The only currency of the State of Alabama in the fall of the year 1862 that I know anything of was the treasury notes of the said "Confederate States of America." There was no other currency in circulation in Alabama from the month of October, 1862, to the time of the surrender in the spring of the year 1865. I don't recollect the comparative value of gold and confederate treasury notes in 1862.

4. I know nothing else of benefit to the defendants, unless it may be to his benefit that he was averse to taking the confederate treasury-notes at the time I paid them to him, and he tried to avoid receiving them by keeping out of the way, and I had to hunt him up to make him take them. Public opinion was strong against any person who refused to take them at that time, and my recollection is that John A. C. Horn was threatened before he took the money. I know nothing further.

W. E. CLARKE.

Answers to cross-interrogatories.

Ans. to cross-int. 1. As stated before in my answers to interrogatories-in-chief, James B. Craighead bought lands devised by the will
284 of John Horn, dec'd, and gave his note for the purchase-money. I think the note was payable to John A. C. Horn, as executor of John Horn, dec'd. I think Craighead purchased the said land at the sale of the lands of John Horn, dec'd, by said executor. I can't recollect precisely what year he purchased the same, but, to the best of my recollection, it was in the latter part of the year 1858 or January, 1859. The debt was contracted by James B. Craighead in his life-time. I do not recollect precisely when said debt was due; but, to the best of my recollection, it was due Jan'y 1st, 1861. Of this I am not positive.

Ans. to cross int. 2. Confederate States treasury-notes was the only currency in circulation that I know of from 1862 to 1865.

W. E. CLARKE.

I, William F. Glover, commissioner aforesaid, do hereby certify that the foregoing testimony of said witness was written by himself, and by him read over, and by him fully approved, and signed by him in his own proper handwriting in my presence.

Given under my hand and seal this day and year above written.

WILLIAM F. GLOVER, [SEAL.]
Commissioner.

285 *Commission to examine Jno. A. C. Horn.*

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

WM LOCKHART AND OTHERS
vs.
JOHN A. C. HORN, AS EX'T'R, ET ALS.

To J. Y. Kilpatrick and H. R. Gordon, esq'r's, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you or any of you full power and authority to examine John A. C. Horn as witness in a cause pending in our said court, wherein W'm Lockhart et als. are plaintiffs and John A. C. Horn, ex'r, et als., are defendants.

And therefore we command you or any of you, that, on the of , 186 , you do cause the said John A. C. Horn to come before you or either of you, and then and there examine him on oath as a witness in the cause aforesaid upon the interrogatories and cross-interrogatories hereto attached; and that you or either of you do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of
286 you, into our said circuit court with all convenient speed.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, the 4th Monday of December, in the year of our Lord one thousand eight hundred and sixty-eight.

Issued the 4th day of February, 1869.

[SEAL.] Attest:

N. W. TRIMBLE,
Clk Cir. Ct Sou. Dist. Ala.

Int'y's to J. A. C. Horn.

In the circuit court of the United States at Mobile, Alabama. In chancery.

WILLIAM LOCKHART AND HIS WIFE, SARAH Lockhart, and Narcissa Lockhart, complainants,
vs.
JOHN A. C. HORN, AS EXECUTOR OF JOHN Horn, dec'd, and others, defendants.

Interrogatories to be propounded to John A. C. Horn, one of the defendants in the above-stated cause, the answers thereto to be read in evidence on the hearing of said cause.

287 Said witness Horn resides in Camden, Wilcox Co., Alabama.

1. Interrogatory 1. State whether or not you are one of the defendants in the above-stated cause, and what was your relationship to John Horn, now deceased.

2. Interrogatory 2. When did the said John Horn die? Give the day of the week, day of the month, and year, as near as you can. Where did he die? State whether or not you were present when he (said John

Horn) died. If not, how long before he died did you see said John Horn, and at what place? Of what disease or complaint did said John Horn die?

3. Interrogatory 3. Did you or not, at any time, and when, make any contract or agreement with the said John Horn as to your farming and planting with him, or on his plantation? If yes, in what year was said contract or agreement entered into between you and said John Horn? State fully and particularly what said contract or agreement was, and how long it was to continue. Was any one present beside said John Horn and yourself when said contract or agreement was made between you? If yes, name all who were present? State whether or not
288 the said John Horn, on any occasion, after the contract or agreement was made, stated the same in the presence of any one; and if yes, in whose presence.

4. Interrogatory 4. How long did you live with your father, said John Horn, after said contract or agreement was entered into, and when did you move from your father's? State whether or not there was anything passed between you and your father in relation to said contract or agreement on your moving from your father's. If yes, state all that was said by him at and about the time of your moving. Who was present when the conversation between you and your father, on that subject, took place?

5. Interrogatory 5. How long did the said contract or agreement between you and your father continue to be performed, and what ended it? State whether or not your father, the said John Horn, expressed any satisfaction or dissatisfaction at your moving away from him. State fully and particularly all about this matter, that you have not already stated in your answer to the fourth interrogatory; and also state how, and in what manner, the business was carried on after you moved away from said John Horn's. Where did you move to? How far from
289 said John Horn's?

6. Interrogatory 6. State whether or not you know anything of your father, the said John Horn, deceased, making a will or wills; if yes, please state how many wills he made, so far as you know. State whether or not you were present when the first one was made, or when the last one was made. If yes, state when each of them was made. If you know, from your own knowledge or from what the said John Horn told you, the contents of said will or wills, state the contents of each of them as fully and particularly as you can. Who were the witnesses to the last will, and are they living or dead?

7. Interrogatory 7. State, if you know, where the said John Horn, deceased, kept his will or wills. If he kept them in any particular box, or trunk, or desk, describe it particularly; and also state where he kept the box, trunk, or desk in which said will or wills were kept.

8. Interrogatory 8. If you, at any time, shortly before the death of said John Horn, saw said will or wills, or either of them, state when and where you saw them, or either of them; and state how it was you happened to see them; and state what day of the week, and what
290 day of the month, and what month and year it was you saw the said will or wills, and how long before said John Horn's death. State all about this fully and particularly.

9. Interrogatory 9. State whether or not the complainant William Lockhart was at the house of said John Horn shortly before said John Horn's death. When did he leave there—give day and date—and where did said Lockhart go to? How long did you remain in his company the

day he left said John Horn's house, and where were you and said William Lockhart going that day, and did you and he go?

10. Interrogatory 10. How long after you had left your father's house was it before you returned there, and why did you return? State all about it. When did you reach your father's house on your return to it? Give the hour, day, and date, as nearly as you can? How long was it from the time you left your father's house in company with said William Lockhart till you returned to it? When you returned to your father's house how did you find your father, the said John Horn? What white persons were present in and about said John Horn's house when
291 you reached there, and what colored persons—name them all?

11. Interrogatory 11. How long after your father's death was it before you examined his papers? Who were present when you examined them? And state whether or not you found any will of said John Horn among his papers. State whether or not you made a diligent and thorough search among the papers of said John Horn. If you had, at any time, before said search and before said John Horn's death, seen any will or wills of said John Horn, state when; and if you saw any such will or wills of said John Horn in any particular box, trunk, or desk, did you search in such box, trunk, or desk, and state whether or not you found any will there. State fully and particularly about this.

12. Interrogatory 12. How long had Mrs. F. L. Bryan been living at your father's house before his death, and where was she living at the time of his death? State, if you know, whether or not said Mrs. F. L. Bryan knew that the said John Horn had made a will, and state whether or not said Mrs. F. L. Bryan knew where said John Horn kept his will. If you ever heard said Mrs. F. L. Bryan make any deelarations
292 or threats about destroying the last will made by said John Horn, or say anything about its not going into effect, state all you heard her say on that subject; and state when you heard her make said declarations or threats, if any?

13. Interrogatory 13. State whether or not, previous to the death of the said John Horn, the said Mrs. F. L. Bryan had free access to the boxes and trunks of said John Horn; and also state whether or not, after the death of said John Horn, she had free access to his boxes and trunks?

14. Interrogatory 14. State whether or not, in the settling up the estate of said John , deceased, you received any confederate notes in payment of debts due said estate. If you did, state as nearly as you can from whom you received confederate treasury notes. How much did you receive from each, and the time when you received it? What did you do with the confederate treasury notes so received by you? If you answer that you bonded them, state how much you bonded, and state why you bonded it, and what you did with the bonds. If you state that you received any confederate treasury notes from the estate of J. B. Craighead, state when said J. B. Craighead died.
293 15. Interrogatory 15. If you know, state what kind of money was the currency in the State of Alabama in the year 1862, and up to the spring of 1865. If there was any other currency in circulation in the State of Alabama in the fall of 1862, except confederate currency, please state what other currency. What was the comparative value of gold and confederate treasury notes in the month of October, 1862? State their comparative value on the 8th day of October, 1862.

16. Interrogatory 16. State whether or not you were present at the trial of the probate of the will of the said John Horn in the probate court of Marengo County, Alabama, in September, 1858. If yes,

state who of the heirs of said John Horn were present in person at the said trial of the will, and state who were present by attorney. State all you know about this. Attach to your answer to this interrogatory a copy of said John Horn's will, as probated in the probate court of Marengo County, Alabama. Who were the witnesses to the will so probated, and are they living or dead?

17. Interrogatory 17. After the probate of the will of the said John Horn, state what was done with his negro property. State fully
294 all about what disposition was made of his slaves. What became of the slaves allotted to Mrs. F. L. Bryan? State whether or not Mrs. Bryan had, amongst the slaves owned by her, a negro woman named Jinny or Virginia. What did said Virginia do during the time she stayed about your father's; what was her occupation? How long had she lived at your father's, and where was she living when your father died?

18. Interrogatory 18. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. J. CUMMING &
L. GIBBONS,
Sol'rs for Def'd't Horn.

The def'd't Horn suggest' John Y. Kilpatrick and H. R. Gordon, both of Camden, Wilcox Co., Ala., as suitable persons for commissioners to take the testimony of said witness Horn.

S. J. CUMMING & L. GIBBONS,
Sol's for Horn.

295 Filed Nov. 30th, 1868.

N. W. TRIMBLE, *Clerk.*

Marshal's return.

Rec'd M. O. Dec. 4th, 1868, and executed Dec. 5th, 1868, by serving copy on W'm Boyles, esq.

R. W. HEALY,
U. S. Marshal.
By J. J. WATSON,
Dep'ty U. S. Marshal.

Cross-int'ys to J. A. C. Horn.

In circuit court of Mobile for the district of Alabama.

W'M LOCKHART AND WIFE AND OTHERS
vs.
JOHN A. C. HORN & OTHERS.

Cross-interrogatories to John A. C. Horn, a witness examined in his own behalf in said cause.

(The complainants in said cause object to the competency of said witness to testify in his own behalf in said cause.)

Cross-int. 1. Tell fully and at length all that you told the negroes

day he left said John Horn's house, and where were you and said William Lockhart going that day, and did you and he go?

10. Interrogatory 10. How long after you had left your father's house was it before you returned there, and why did you return? State all about it. When did you reach your father's house on your return to it? Give the hour, day, and date, as nearly as you can? How long was it from the time you left your father's house in company with said William Lockhart till you returned to it? When you returned to your father's house how did you find your father, the said John Horn? What white persons were present in and about said John Horn's house when
291 you reached there, and what colored persons—name them all?

11. Interrogatory 11. How long after your father's death was it before you examined his papers? Who were present when you examined them? And state whether or not you found any will of said John Horn among his papers. State whether or not you made a diligent and thorough search among the papers of said John Horn. If you had, at any time, before said search and before said John Horn's death, seen any will or wills of said John Horn, state when; and if you saw any such will or wills of said John Horn in any particular box, trunk, or desk, did you search in such box, trunk, or desk, and state whether or not you found any will there. State fully and particularly about this.

12. Interrogatory 12. How long had Mrs. F. L. Bryan been living at your father's house before his death, and where was she living at the time of his death? State, if you know, whether or not said Mrs. F. L. Bryan knew that the said John Horn had made a will, and state whether or not said Mrs. F. L. Bryan knew where said John Horn kept his will. If you ever heard said Mrs. F. L. Bryan make any deelarations
292 or threats about destroying the last will made by said John Horn, or say anything about its not going into effect, state all you heard her say on that subject; and state when you heard her make said declarations or threats, if any?

13. Interrogatory 13. State whether or not, previous to the death of the said John Horn, the said Mrs. F. L. Bryan had free access to the boxes and trunks of said John Horn; and also state whether or not, after the death of said John Horn, she had free access to his boxes and trunks?

14. Interrogatory 14. State whether or not, in the settling up the estate of said John , deceased, you received any confederate notes in payment of debts due said estate. If you did, state as nearly as you can from whom you received confederate treasury notes. How much did you receive from each, and the time when you received it? What did you do with the confederate treasury notes so received by you? If you answer that you bonded them, state how much you bonded, and state why you bonded it, and what you did with the bonds. If you state that you received any confederate treasury notes from the estate of J. B. Craighead, state when said J. B. Craighead died.
293 15. Interrogatory 15. If you know, state what kind of money was the currency in the State of Alabama in the year 1862, and up to the spring of 1865. If there was any other currency in circulation in the State of Alabama in the fall of 1862, except confederate currency, please state what other currency. What was the comparative value of gold and confederate treasury notes in the month of October, 1862? State their comparative value on the 8th day of October, 1862.

16. Interrogatory 16. State whether or not you were present at the trial of the probate of the will of the said John Horn in the probate court of Marengo County, Alabama, in September, 1858. If yes,

state who of the heirs of said John Horn were present in person at the said trial of the will, and state who were present by attorney. State all you know about this. Attach to your answer to this interrogatory a copy of said John Horn's will, as probated in the probate court of Marengo County, Alabama. Who were the witnesses to the will so probated, and are they living or dead?

17. Interrogatory 17. After the probate of the will of the said John Horn, state what was done with his negro property. State fully
294 all about what disposition was made of his slaves. What became of the slaves allotted to Mrs. F. L. Bryan? State whether or not Mrs. Bryan had, amongst the slaves owned by her, a negro woman named Jinny or Virginia. What did said Virginia do during the time she stayed about your father's; what was her occupation? How long had she lived at your father's, and where was she living when your father died?

18. Interrogatory 18. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

S. J. CUMMING &
L. GIBBONS,
Sol'rs for Def'd't Horn.

The def'd't Horn suggest' John Y. Kilpatrick and H. R. Gordon, both of Camden, Wilcox Co., Ala., as suitable persons for commissioners to take the testimony of said witness Horn.

S. J. CUMMING & L. GIBBONS,
Sol's for Horn.

295 Filed Nov. 30th, 1868.

N. W. TRIMBLE, *Clerk.*

Marshal's return.

Rec'd M. O. Dec. 4th, 1868, and executed Dec. 5th, 1868, by serving copy on W'm Boyles, esq.

R. W. HEALY,
U. S. Marshal.
By J. J. WATSON,
Dep'ty U. S. Marshal.

Cross-int'ys to J. A. C. Horn.

In circuit court of Mobile for the district of Alabama.

W'M LOCKHART AND WIFE AND OTHERS
vs.
JOHN A. C. HORN & OTHERS.

Cross-interrogatories to John A. C. Horn, a witness examined in his own behalf in said cause.

(The complainants in said cause object to the competency of said witness to testify in his own behalf in said cause.)

Cross-int. 1. Tell fully and at length all that you told the negroes

Virginia and Gip or Gilbert, Tom or Thomas and who have been examined as witnesses in this cause, in reference to the points or matters upon which you desired them to testify in this cause; and state on your oath whether you have fully answered this question to
296 the best and uttermost of your knowledge. How often did you speak to each of them in reference to these matters, and when did you speak to them, and how often did you tell them that you wanted them to tell the truth in this matter? Why did you find it necessary to tell them so often to this effect?

Cross-int. 2. When did you first find out that said negroes, or any of them, knew anything about your father's will, and when did you first learn from them of the several conversations they heard between your sister Mrs. Bryan, and other persons? Who was your first informant amongst the negroes? Was it Virginia? Was she so far your confidential friend as to come to you with information of a supposed criminal act on the part of your sister? Did you receive her information with gratitude or resentment? What was the ground of this peculiar confidence between you and Virginia?

Cross-int. 3. After Virginia had told you of the destruction of your father's will by your sister, did you still treat her with respect and confidence? Did you not aid her and become her surety on a bond to enjoin her husband from taking possession of her seperate estate, and
297 from giving possession of her children? Why did you thus act towards her if you believed that Virginia had told you the truth?

Cross-int. 4. How many and what description of papers did your father keep in a black trunk with blue or green bands around it, that was usually under his bed? How many papers in that trunk did he keep in yellow envelopes? Do you not know that no negro your father had could have distinguished his will from any other paper in his possession? Did you not remind your negro witnesses or some of them, before they gave their depositions in this cause, that your father's will was kept in a yellow envelope? Did you not speak to them upon this point, and what did you say to them or either of them?

Cross-int. 5. What has become of your mother's deposition, taken on the proceeding in the probate court of Marengo County, to prove your father's will? Tell, as fully as you can recollect, what she swore on that occasion, and tell it fully. Have you not destroyed said deposition or caused it to be destroyed?

Cross-int. 6. Did you not pay or agree to pay W. B. Modawell fifteen hundred dollars, or other large sum, if you should succeed in said
298 proceeding, in establishing said will? What did you pay him, and what was it for? Who was your counsel in said proceeding, upon whom you really depended for the trial of the cause, and how much did you pay such counsel, and how much more did you pay said Modawell than you paid said counsel?

Cross-int. 7. Can you state on your oath which of your sisters were parties contestant, and were represented by authorized counsel in the contest of your father's will?

Cross-int. 8. Had you not promised your father that you would remain with him or take charge of his business while he lived, and was not this the reason why he gave you more of his property than he gave to others in his will? Were you not at the time of his death possessed of more property than either of your sisters? If not which of them had more property than yourself? Did you not leave your father's business and remove to Wilcox County before his death?

Cross-int. 9. Was your father in the habit of locking up his money

and papers against his wife and daughters? Was he in the habit of telling his business matters to his negroes to the exclusion of his wife and daughters from his confidence? Did he confide more in his
299 negroes than in your mother or sisters, either as to their judgment or faithfulness to his interests.? Which of his negroes did he so honor with his confidence? Did he teach you to respect them above your mother?

Cross-int. 10. Who besides yourself has counsel' with your negro witnesses to prompt or stuff them with what they should say in your behalf? Whom have you asked as counsel so to converse with them?

Cross-int. 11. Were you present when your negro witnesses were examined in this cause? How many lawyers did you have present during said examination aiding you? Did the commissioner take down the answers of the witnesses in the language they used in swearing before him? Did he not become the interpreter of their meaning, and use words of his own to express their ideas? Was this not especially the case when he was taking down their answers in reply to the questions that called out the sayings or declarations of Mrs. Bryan and your father? Did not the commissioner then and there insist upon his right "to put into good English" the answers given by said witnesses?

Cross-int. 12. State how much property and the particular description of the property you have retained in your possession belonging
300 to or set apart to each of your sisters, as heirs or distributees of your father's estate; and tell the annual value of the rent or hire of said property each year that it remained in your possession; and also, the value thereof at the time you took possession of the same and undertook to hold the same for such persons. If you retained money in your hands that belonged to either of them, tell how much you so retained, and tell what time it was set apart or decreed to each of said persons?

Cross-int. 13. What has been the annual value of the rent of the lands of your father's estate that remain unsold, during each year since his death, including in a separate estimate the value of the rental of the part of said land set apart to your mother as her dower or otherwise?

Cross int. 14. At what times and from what persons did you receive the money of said estate that you invested in Confederate States bonds, and how much did you receive from each? How long did you keep each of said sums of money before you invested the same, and at what particular place did you keep the same? When you come to invest it how could you distinguish it from your own money?

301 Cross-int. 15. How much money, property, or other means did your father place in your hands to aid Mrs. Bryan in her attempt to remove her husband from the trusteeship of her separate estate, and what have you done with it?

Cross-int. 16. When you attempted to make a final settlement of your administration on the estate of your father, which of his heirs was present in person? Where did each of them then live? Was it not then impossible to get any mail communications to those living in Texas? Did you give them any personal notice of your proposed settlement. How long since any of them had been in Alabama? Who resided in Texas, when said settlement took place?

MORGAN & LAPSLEY &
BOYLES & OVERALL,
Att'ys for Compl'ts.

Filed Dec. 26th, 1868.

N. W. TRIMBLE, *Clerk.*

302 W'M LOCKHART ET ALS, COMPLAINANTS,
vs.
JNO. A. C. HORN AS EX'R, ET ALS, DEFENDANTS.

In the circuit court of the United States at Mobile, Alabama. In chancery.

Be it remembered that, on this the 21st day of April, 1869, at my law office in the town of Camden, Wilcox County, Ala., that being the time and place appointed by me to execute the annexed commission, I, Jno. Y. Kilpatrick, one the commissioners named in the annexed, being the only commissioner present, the other being absent, not being of counsel or attorney to either of the parties in this suit, nor in any way related to any of the parties to this suit, or interested in the event thereof, caused to appear before me Jno. A. C. Horn, witness in said cause in behalf of the defendants therein, who is a resident of Camden, Wilcox Co., Ala., and who is personally known to me, and having cautioned and examined said witness Jno. A. C. Horn, and sworn him to tell the truth, the whole truth, and nothing but the truth as to the matters in controversy in this case now pending in the said circuit court of the United
303 States at Mobile, Ala., and also to make full and true answers to the interrogatories and cross-interrogatories hereto annexed, thereupon the said witness Jno. A. C. Horn answered and deposed as follows, to wit:

To direct interrogatories witness answers as follows, to wit:

Answer to int'y 1st. I am one of the defendants in the above-stated cause and I am the son of John Horn, deceased.

Answer to int'y 2nd. I left John Horn's house on Wednesday morning the 10th day of March, 1858, and arrived back at his house on Friday morning the 12th day of March 1858, and on my return I found him dead and in his coffin ready for burial. He died at his residence in Marengo Co., Alabama. I was not present when he died. I saw him on Wednesday morning before his death, at his residence in Marengo Co., Ala. I don't know of what disease he died. He was in usual health when I left him on the Wednesday morning before I found him dead on Friday morning following.

Ans. to int'y 3. Yes, I did make such a contract with said Jno.
304 Horn in the year 1856. He proposed to me that if I would go back to Marengo County to live, and attend to his business he would give me for my services and for the labor of four negroes that belonged to me, on his plantation, one-third of the cotton crop. I agreed to do so in 1856, and in 1857 I went and attended to his business; there was no stipulated time for the contract to continue; there was no one present when the proposition was made to me by my father but him and myself. Afterwards I and my father had a conversation in the presence of Mr. W. G. Curry and my father stated the contract or agreement in that conversation, W. G. Curry being then present.

Ans. to int. 4. I lived with my father all of the year 1857, and went back to Wilcox County to live about the 12th of January, 1858. I moved my furniture sometime in April, 1858, after my father's death. I told my father, J'no. Horn, it was necessary, in consequence of the death of my father-in-law, for me to go back to Wilcox County to live. He, my father, said that he could not object to it. And at the same time I asked him if he was willing for me to go back to Wilcox County to live, and our farming to go on as it was, provided I would employ an overseer and go to and from his plantation to the plantation my father-in-law died

305 on, and superintend his (my father's) business. My father told me he was willing. Afterwards I and my father went into the room where Mr. Curry was, and employed Curry to overseer the business, when the same conversation occurred again in the presence of Mr. Curry. And my father stated in the presence of Curry, our agreement, which agreement was this: I was to be responsible to Curry for his wages, and I was to get one-third of the cotton-crop for supervising, and for the labor of four negroes that I had on the place.

Ans. to int'y 5th. The contract continued up to his death, and the making and gathering the crop. It ended with that crop of that year. My father expressed no dissatisfaction at my going back, but said he was satisfied for me to go back to Wilcox County to live. Mr. Curry overseed the plantation, and I went to and from and superintended the business. I moved to Wilcox County, about 45 miles from John Horn's residence.

Ans. to int'y 6th. I do know that my father, Jno. Horn made two wills. I was not present when the first will was made; I was present when the last one was made. The first will was made about the year 1847. The last one was made in May, 1857. I know from my

306 own knowledge when the last will was made, and the contents of said wills. By the first will he gave to his wife, Rebecca Horn, all of his property, during her life, and at her death it was to be equally divided among his children. The last will was the same as the first, except after my mother's, his wife's death, the home-tract of land was to go to me, and two hundred and forty acres of land which was detached from the home-place was to go to his five daughters, and was to be sold by his executor on such terms as he may think best, and the proceeds divided equally among said daughters, and a certain negro girl Ally, was given to Mrs. Bryant at the death of my mother. The balance of the estate was to be divided equally among his children, with certain limitations as to Mrs. Dumas. The heirs were charged with advancements. W. B. Modawell and D. C. Alexander were the witnesses to the last will. Modawell is living, Alexander is dead.

Ans. to int'y 7th. I do know where said Jno. Horn kept his wills; he kept them in a small black trunk which had green bands around it, under his bed.

Ans. to int'y 8th. I did see said will, shortly before said J'no. Horn's death. Early on Wednesday morning, the 10th day of March, 1858,

307 I was at my father's house. My father sent to the room in which I was for me to go into his room; he wanted to see me. After I got into his room he told me he had a land certificate in his trunk that he wanted to give me in order that I might send it to the probate judge of Monroe County and find out whether or not the numbers of it were contained in a deed that he had given to Mrs. Bryan, my sister. He then told a negro girl, called Jinny, or Virginia, to get his trunk from under his bed and had it set near me, and he opened the trunk and got the certificate out and gave it to me, at which time I saw both of his wills lying in his trunk. It was on Wednesday morning, before I found him dead on Friday morning following, that I saw said wills.

Ans. to int'y 9th. W'm Lockhart was at my father's house shortly before his death. He left my father's with me on Wednesday morning, the 10th day of March, 1858, and went with me to Prairie Bluff, in order to take a boat to go to his home in Texas. I remained in his company about eight hours that day. After leaving him I went to my home in Wilcox County.

Ans. to int'y 10th. I left my father's house on Wednesday morn-

308 ing after breakfast, and returned there on the Friday morning following. I returned there in consequence of being informed of my father's illness. I reached my father's house early Friday morning, the 12th of March, 1858. It was about forty-six hours from the time I left my father's house with said W'm Lockhart, before I returned to his house. When I returned to my father's house I found him dead and in his coffin. When I reached my father's house I found Mr. J. M. Alexander, D. C. Alexander, W'm Lockhart, Miss Mary E. Partridge, now Mrs. Snell, Mrs. F. L. Bryan, and my mother; they were the only white persons that I can now recollect. Jenny or Virginia, Laura, and a woman named Amy were all the colored persons that I can now recollect that were about the house when I returned.

Ans. to int'y 11th. It was about four days after his death I examined his papers. D. C. Alexander, James Simmons, W'm Lockhart, Mrs. F. L. Bryan, and my mother, Mrs. Rebecca Horn, were present when I examined said Jno. Horn's papers. I found no will of said Jno. Horn among his papers. I made diligent and thorough search among the papers of said Jno. Horn for said will. Early on Wednesday morning, the 10th of March, 1858, I saw said Jno. Horn's wills. I saw
309 them in his small black trunk with green bands around it, and I did search in the same trunk that I saw the wills in, and did not find any will or wills there. The trunk that I speak of was the same trunk that I saw his wills in before his death.

Ans. to int'y 12th. Mrs. F. L. Bryan had been living at my father's about thirteen months before his death, and was living there at the time of his death. Mrs. F. L. Bryan knew that Jno. Horn made a will, and was present when he made his last will, and she knew where he kept his will. Mrs. Bryan was not satisfied with the will of Jno. Horn when it was made, and several times during the year 1857 she told me that she intended to see that the will should not stand.

Ans. to int'y 13th. Mrs. F. L. Bryan had free access to the said Jno. Horn's trunk before his death and also after his death, until I took possession of the trunk and papers as executor of Jno. Horn's estate.

Ans. to int'y 14th. I did receive in settling up the estate of Jno. Horn, confederate treasury notes in payment of debts due said estate. I received through the hands of W. E. Clark, esquire, from the estate of James B. Craighead, five thousand and seventy-five dollars
310 and twenty cents. W. B. Modawell, as attorney, collected for the estate, in confederate money, seventeen hundred and six dollars and seventy-six cents. I also received other sums of confederate money, but I do not remember the amounts or from whom received. I received said sums of money about October, 1862. I bonded them because there was a law passed by the confederate congress compelling treasury notes to be bonded by such a time or they would become worthless. I reported the same to the probate court of Marengo County as required by law, and filed the certificate or bond in said court. James B Craighead died in the month of June, 1859.

Ans. to int'y 15th. The currency in the State of Alabama, in the year 1862, and up to the spring of 1865, was confederate treasury notes and some Alabama State money, redeemable in confederate treasury notes. There was no other currency in circulation in the State of Alabama in the fall of 1862, except, as above stated, that witness knows of. I do not know certainly what was the comparative value of gold and confederate treasury notes in October, 1862, but to the best of my information and belief it was as follows: On the first day of October, 1862, one dollar in gold was worth two and a half dollars in confederate cur-

311 rency. On the 10th day of the same month in 1862, one dollar in gold was worth two and three-quarters in confederate currency. On the 20th day of the same month and year, worth the same. I do not know what it was worth on the the 8th day of October, 1862, but believe it was of about the same value as on the 10th of that month.

Ans. to int'y 16th. I was present at the trial of the will of Jno. Horn, in the probate court in Marengo County, in September, 1858. Mrs. Narcissa Lockhart and Mrs. F. L. Bryan were present at the trial. My understanding at that time was, that all were represented by attorney. Rob't Hart, esq., told me that he represented all the heirs of said John Horn, deceased, except myself, as contestants on the trial of said will. W. B. Modawell and D. C. Alexander were the witnesses to the will. W. B. Modawell is living. D. C. Alexander is dead. A copy of said will is hereto attached, marked Exhibit "A."

Ans. to int'y 17th. After the probate of the will, the negro property was kept on the plantation until about the end of the year 1858, and then divided among the heirs of said John Horn, deceased, and turned over to each one of the heirs by me as executor of said Jno. Horn. Mrs. F. L. Bryan's negroes were turned over to her, but remained on

312 the plantation all the time, except one negro woman by the name of Amy, who Mrs. Bryan hired out most of the year 1859. Mrs. Bryan had a negro woman named Jenny or Virginia, who stayed in the house, and waited on Mrs. Bryan. Jenny or Virginia's occupation was that of house servant. Virginia lived at my father's about thirteen months before his death, and she was living there when he died.

Ans. to int'y 18th. I know nothing more that I can now recollect.

JOHN A. C. HORN.

Witness Jno. A. C. Horn, to cross-interrogatories, answers as follows to wit:

Ans. to cross-int'y 1st. I talked with said negroes as to what they knew about the death of my father, Jno. Horn—about whether or not any of them saw Jno. Horn destroy his will, and what they knew about it. Also, as to who was present in the house about the time Jno. Horn died; and if they saw any one go to the trunk of Jno. Horn, and take any paper or papers out of it. If they had ever heard Jno. Horn say anything about his will, or about giving his property to his children. If they had ever heard Jno. Horn complain about my moving to

313 Wilcox County, and other matters and facts connected with the case, that I have forgotten. I asked all my witnesses what they knew concerning the matter, as I had no other way to find out what they knew, or to know whether or not to have them as witnesses. I talked to each one of them two or three times in reference to the matters. I first spoke to them shortly after the will was missing in the year 1858. I told them in each conversation that I only wanted them to tell the truth; but when they would speak hesitatingly, as persons sometimes do when they don't want to be a witness, I told them all I wanted was the truth, and that the truth would not hurt anybody. I repeated it to them in order to get them to tell me all they knew, and I state on my oath, that I have fully answered the question to the best and uttermost of my knowledge, as well as I can now remember.

Ans. to cross-int'y 2nd. I found it out shortly after the death of my father and after the search of the will. Gip Horn was my first informant amongst the negroes. Virginia did not come to me. I went to her, after Gip Horn told me what Virginia had said she saw. I then

314 inquired of Virginia what she had heard and what she had seen

about the destruction of the will, and she then informed me. Virginia then insisted that I should not say anything about it, for the reason, if her mistress (Mrs. Bryan) knew she told me, she would punish her for telling me. All this occurred shortly after my father's death, and was the first I heard about the destruction of the will. I knowing that the negroes could not at that time be used as witnesses, said nothing about it only to my attorneys. I did not receive the information with gratitude, neither did I resent it. I was only sorry to think my sister was guilty of so great a crime. There was no peculiar confidence between Virginia and myself.

Ans. to cross-int'y 3rd. I did treat her with respect afterwards, and did all I could on the trial of the will to keep it from being known that she had any hand in destroying the will, for I did not want her disgraced. I did not have much confidence in her before my father's death. I did aid her, by her request, against her husband. I sued out a writ of injunction to keep her husband from intermeddling with her property and children, and gave an injunction bond. I was not security
for her on the bond, but was the principal. My father, Jno.
315 Horn, and W. P. Leslie were the securities on the bond. I assisted her because she requested me to do so, and I being her only brother. Virginia had no reason to tell me a falsehood that I know of, and I believe she told me the truth.

Ans. to cross-int'y 4th. I don't recollect that I ever counted the papers that my father kept in his trunk that he kept under his bed. He kept all his papers in that trunk. There were other papers in his trunk with yellow envelopes, but they were kept in bundles wrapt up together. The wills lay in one end of his trunk, and each one was in an envelope to itself, and Virginia being all the time in the house, and being the one that usually handed his trunk to him, and had frequently seen him handle his papers, I believe she could tell the will from any other papers. I did not remind any of my negro witnesses, nor tell them that the will was in a yellow envelope. When I first talked to Virginia I asked her what sort of papers she saw Mrs. Bryan take out of the trunk, and she told me they were in yellow envelopes.

Ans. to cross-int'y 5th. I don't know what has become of my mother's
deposition taken on the proceedings in the probate court of Ma-
316 rengo County, to prove my father's will; neither do I recollect what she swore on that occasion. Her depositions were not read on the trial, and I don't now recollect of reading it. I did not destroy it, or cause it to be destroyed, nor do I know what has become of it.

Ans. to cross-int'y 6th. I did not pay or agree to pay W. B. Modawell fifteen hundred dollars or other large sum, provided I should succeed in establishing said will. I paid him eight hundred dollars, because I thought he was entitled to it for his services in the case. W'm E. Clark, esq., and W'm M. Brooks, esq., were my leading attorneys in establishing the will. W. B. Modawell was the attorney for the estate and assisted me in getting evidence in the case and in preparing it. I depended on W'm E. Clark and W'm M. Brooks, esq'rs, in the management of the case; I paid Mr. Clark two thousand dollars, and Mr. Brooks two thousand; I only paid said Modawell eight hundred dollars, as above stated, in the case.

Ans. to cross-int'y 7th. After the trial of the will I was told by Mrs.
Narcissa Lockhart and Mrs. Dumas, now Mrs. Nabors, and W'm Lock-
hart, that all the heirs were contesting and had contested the will,
317 and, as it was now established, they were now done with it. Rob't Hart, esq., one of the attorneys for the contestants, also

told me that he represented all the heirs, except myself, as contestants on the trial of the will.

Ans. to cross-int'y 8th. I did not make any such promise, neither did he request it of me. My father told me the reason why he gave me his home-place, was that he never had given me but little; and taking into consideration the amounts he had given his daughters, and the time that they had it, the will would only make me about even with his daughters. I can't say positively, but from the best information that I have, I would say that my sisters, each one of them, was possessed of more property, at the time of my father's death, than I was. I did remove to Wilcox County before my father's death, but did not leave my father's business before his death. I went to and from the plantation that my father-in-law died on, to my father's plantation and attended to his business up to the time of my father's death, and until the end of 1858.

Ans. to cross-int'y 9th. My father was not in the habit of locking up his money and papers against his wife and daughters, neither
318 was he in the habit of telling his business matters to his negroes to the exclusion of his wife and daughter. He was in the habit of telling Tom and Gip his business matters as he had confidence in them. I don't know that he confided more in Tom and Gip, as to their faithfulness to his interests, but I do know that he confided more in their judgment as to plantation business matters. If he honored any with his confidence, it was Tom and Gip. My father was a high-toned gentleman, I believe, and taught me to respect my mother above all others.

Ans. to cross int'y 10th. I requested W. B. Modawell to converse with them before I went to see them about this case since this suit commenced, but did not request him nor expect him to prompt or stuff them with what they should say, for I believe they knew enough, if they had not forgotten it, without prompting or stuffing them with any thing. Mr. Modawell told me that he only conversed with one of them. So far as I remember, I never asked any one else to talk with any of them.

Ans. to cross-int'y 11th. I was present when my negro witnesses were examined in this cause. Mr. Cumming was present part of the time, and he was the only attorney there by my request. The
319 commissioner took down the evidence of the witnesses in their own language, so far as I know. He was not the interpreter of their meaning by using his own words to express their ideas. That was not the case as to the declaration of Mrs. Bryan or Jno. Horn, or as to any other testimony when I was present. What occurred when I was out I can't say. I don't recollect of the commissioner insisting upon his right to put in good language c English the answers given by said witnesses.

Ans. to cross int'y 12th. After the division of the estate I retained no property, in my possession, belonging to or set apart to either of my sisters, except the land given to them by will; that was retained but a short time before it was sold by me as executor of my father's will, Jan'y the 8th, 1859, for the benefit of my sisters. My mother and myself farmed together, and I had more hands than my mother. Shortly after the division of the estate I turned Mrs. F. L. Bryan's negroes over to her. Mrs. Bryan put her negroes, that she drew from the estate, except Amy, in with mother's negroes to make them equal to mine, and in this way they worked, up to the time of their emancipation, and mother and Mrs. Bryan got the benefit of them, if there was any

320 benefit in them. All of the negroes that Mrs. Bryan drew that went into the plantation, were small except two, and one of the grown ones that went into the plantation was a breeding woman; was not healthy and died several years before the negroes were set free; and, as to their value, I should say it was but little if any; I don't know how much. The probate court of Marengo County, in its decree on the partial settlement made on the 21st day of May, 1860, ordered me to retain the slaves allotted to Mrs. Bryan, subject to the further order of the court; but I, as executor, previous to the date of the decree, turned Mrs. Bryan's negroes over to her, and they were then in her possession. I retained, in my possession, about twenty-seven hundred dollars that was coming to Mrs. Bryan, on the partial settlement of my father's estate—the settlement was made in May, 1860—by the request of Mrs. F. L. Bryan, who wanted me to hold the money that was coming to her on the partial settlement, made in May, 1860, to indemnify myself for money that I have paid out for her, and what she expected me to pay, and for my trouble in lawsuits between her and her husband; also to keep her husband from getting it out of the
321 probate court, and I now insist that I do not owe Mrs. Bryan anything. On the final settlement of my father's estate a final decree was made in favor of Mrs. Bryan against me as executor for the sum of nine hundred and ninety-five dollars and seventy-eight cents, and I now insist that that final decree included everything that I, as executor of the estate, owed Mrs. Bryan as a legatee or distributee of that estate.

Ans. to cross-int'y 13th. It is impossible for me to tell what the annual value of the rent of said land would be, but, from my best information and belief I would say it was worth, during the years 1859, 1860, & 1861, about twelve hundred dollars each year; and during the years 1862, 1863, and 1864, & 1865, I would say about four hundred dollars each year; and during the years 1866, 1867, and 1868, I would say it was worth about eight hundred dollars each year. The dower land, consisting of about eighty acres, I would say, was worth, during the years 1859, 1860, & 1861, about two hundred and forty dollars each year, and during the years 1862, 1863, 1864, & 1865, I would say
322 it was worth about eighty dollars, each year; and during the years 1866, 1867, & 1868, I would say it was worth about one hundred and sixty dollars each year. The low rent during the war was for the reason that very little cotton was made owing to the fact that the law taxing cotton, prevented it being made except in small quantities.

Ans. to cross-int'y 14th. I received most all the money that I invested in Confederate States bonds in the year 1862. I rec'd from the estate of J. B. Craighead five thousand and seventy-five dollars and twenty cents in Oct., 1862. I rec'd from W. B. Modawell, as attorney, moneys he collected for the estate, seventeen hundred and six dollars and seventy-six cents in the fall of 1862. I also received other amounts amounting to about one thousand dollars in the year 1863. I did not invest it in confederate bonds or certificates until the 16th of March, 1864. I kept the money in my possession, except as it was used. My own money I invested in my own name, and the money of the estate I invested as executor, and I distinguished them in that way. I rec'd said confederate money in part payment for the land of the estate sold and in payment of indebtedness to the estate in good faith, and invested said
323 confederate money in confederate bonds or certificates in good

faith, and according to' the law then in force. I also received confederate money in payment of individual debts due to me, and bonded my own money in the same way and at the same time I did the estate money.

Ans. to cross-int'y 15th. My father placed no money, no property, nor any other means in my hands to aid Mrs. Bryan in her attempt to remove her husband from the trusteeship of her seperate estate. My father never gave me one dollar in money or property for that purpose.

Ans. to cross-int'y 16th. At the time I made my final settlement of my father's estate, none of the heirs of the estate w*as* present in person except myself, but Rob't Hart, esq., their attorney, was present at the January term of 1864, and said he represented all the heirs except myself, and requested the settlement to be set for the third Monday in March, 1864; and at the March term of the probate court of Marengo County the settlement was continued in consequence of Mr. Hart being absent;

at the April term was continued. This is my best recollection,
324 and I state positively that Rob't Hart, esq., did appear during the pendency of said final settlement, and said he represented all the heirs except myself, and had the settlement continued once or oftener. Narcissa Lockhart, Sarah Lockhart, and Mary McPhail lived in Texas; Mrs. E. P. Nabors lived in Shelby County, Alabama; Mrs. F. L. Bryan and my mother lived in Marengo County, Ala. It was not impossible to get any mail communication to those in Texas at that time, as I have been informed. My mother and Mrs. Bryan got letters from the Lockharts' and Mrs. McPhail's families, who lived in Texas during the war. To the best of my recollection, my mother and Mrs. Bryan, in the month of April, 1864, received from Texas a letter from Mary McFail, in Texas, giving an account of Charles Lockhart's death, saying he died in February, 1864, in Texas, during the war. Mrs. McFail resided in the same county, and in the same neighborhood, with W'm Lockhart, Sarah Lockhart, and Narcissa Lockhart, complainants in this case. I did not give the heirs residing in Texas any personal notice of the final settlement, but Rob't Hart, esq., their attorney, had notice, and was present in the

probate court in Marengo County, and had said final settlement
325 set for the March term, 1864. Narcissa Lockhart was in Alabama in January, 1859. W'm Lockhart and W'm McFail were in Alabama in May, 1860. Sarah Lockhart was in Alabama in January, 1857. Mary McFail was in Alabama about the year 1856.

JOHN A. C. HORN.

I, Jno. Y. Kilpatrick, one of the commissioners in the said annexed commission named, do hereby certify that the evidence and depositions of the witness Jno. A. C. Horn, his answers and depositions both to the direct and cross-interrogatories hereto annexed, were taken down under oath, on the 21st day of April, 1869, as before said, and they were subscribed by him in my presence on the morning of the 22d day of April, 1869, in my law office in the town of Camden, Wilcox Co., Ala, after the same were distinctly read over to the said witness by me, and approved by him; and that the answers and depositions of the witness Jno. A. C. Horn, to the interrogatories and cross-interrogatories, after being reduced to writing and taken down under oath as aforesaid, and

subscribed as aforesaid by him, have been sealed up, together with
326 the commission, interrogatories, and cross-interrogatories, and Exhibit A[1], and directed by me to the clerk of the circuit court of the United States at Mobile, Ala.

In witness whereof I have hereunto set my hand and affixed my seal on this the 22nd day of April, 1869.

JNO. Y. KILPATRICK, [SEAL.]
Commissioner.

EXHIBIT A[1].—*John T. Kilpatrick, commissioner.*

EXHIBIT A.

I, John Horn, of the county of Marengo, and State of Alabama, being of sound mind and disposing memory, and knowing the uncertainty of life and the certainty of death, do make and publish the following as my last will and testament, to wit:

I give and bequeath unto my beloved wife, Rebecca Horn, all my property, both personal and real, of whatever description that I may be seized and possessed of at the time of my death, to have and to hold the same during her natural life.

I give and bequeath to my son John A. C. Horn, my home-tract of land, containing 720 acres, more or less, together with all the improvements thereon, to have the same absolutely at the death of his mother.

327 I give and bequeath unto my daughter Frances L. Bryan, my negro girl Alla, to have and to hold the same to her seperate use at the death of her mother.

I give and bequeath to my daughters Narcissa M. Lockhart, Sarah A. Lockhart, E. P. Dumas, Mary R. McPhail, and Frances L. Bryan the following land, which is detached from my home-place, containing 240 acres, more or less, to be sold by my executor on such terms as he may think best, and the proceeds divided equally among my said daughters. At the death of my beloved wife I will and bequeath all the balance of my property to all my children, to wit, John A. C. Horn, Sarah A. Lockhart, Narcissa M. Lockhart, Mary R. McPhail, E. P. Dumas, and Frances L. Bryan, to be divided equally between them. If my daughter E. P. Dumas, should die and leave surviving her no child or children, it is my will that her portion of the property should go back to her brother and sisters, and her present or any future husband shall have no part of it. It is my will that, in the final distribution of my estate, *that* the advances I have heretofore made to my children shall be be charged up to them in said distribution, and I hereby charge to my children, as advances heretofore made, the following sums, to wit: John A. C. Horn, $1,650.00; Frances L. Bryan,

328 $8,2. 0.00; Narcissa M. Lockhart, 3,400.00; E. P. Dumas, $8,617.00; Sarah A. Lockhart, 4,400.00; Mary R. McPhail, 6,300.00.

I hereby appoint my son, John A. C. Horn, executor to this my last will and testament.

(Signed) JOHN HORN.

Witnesses:
W. B. MODAWELL.
D. C. ALEXANDER.

Exhibit A[1]. John Y. Kilpatrick, commissioner.

Commission to examine L. L. Bryan.

UNITED STATES OF AMERICA:

Circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

WILLIAM LOCKHART & WIFE ET ALS.
vs.
JOHN A. C. HORN, EX'T'R, LEONIDAS L. BRYAN et al. } In equity.

To W. B. Howard and Brutus Howard, esq'r's, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you or either of you full power and authority to examine Leonidas L. Bryan as a witness in a cause pending in our said court, wherein W'm Lockhart & wife et als. are complainants and John A. C. Horn et als are defendants.

329 And therefore we command you or either of you that, on the day of , 1871, you do cause the said Leonidas L. Bryan, to come before you or either of you and then and there examine him upon the interrogatories and cross-interrogatories hereto attached, on oath, as a witness in the cause aforesaid; and that you or either of you do take such examination and reduce the same into writing, and return the same annexed to this writ closed up under your seal or seals or the seal of either of you, into our said circuit court with all convenient speed.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, the 4th Monday of December, A. D. 1870.

Issued the 25th day of March, A. D. 1871.

Attest:

N. W. TRIMBLE,
Clerk U. S. Cir. C'rt So. Dist. Ala.

Int'ys to L. L. Bryan.

In the circuit court of the United States at Mobile, Ala.

WILLIAM LOCKHART & WIFE ET AL., COMPL'TS,
vs.
JOHN A. C. HORN, EX'OR, LEONIDAS L. BRYAN, et al., DEF'D'TS. } In equity.

330 Interrogatories to be propounded to Leonidas L. Bryan, a witness for the defendant Horn in the above-stated case.

Said witness resides near the Yellow Bluff, in Wilcox County, Alabama.

1. Int. 1. State whether or not you are one of the defendants in the above-stated case. Are you or not acquainted with the complainants in this case, namely, William Lockhart, Sarah Lockhart, and Narcissa Lockhart? What relationship do you bear to said complainants, and what relationship did said complainants bear to John Horn, deceased,

late of Marengo County, Alabama? Where do said complainants reside, and how long have they resided there?

2. Int. 2. Were you or not present at the contest on the propounding the will of said John Horn, deceased, for probate in the probate court of Marengo County, Alabama, in 1858? State who of the heirs of said John Horn, deceased, were present in person on said trial of the will, and state which of said heirs were represented by attorneys on said contest, and state who were their attorneys. Answer these questions fully and particularly, and state how you know it.

331 3. Int 3. State which of the heirs of said John Horn, deceased, were represented by attorneys on the final settlement of the estate of John Horn, deceased, in the probate court of Marengo County, Ala., in May, 1864, and state by what attorneys they were represented. State all about it fully.

4. Int. 4. State, if you know, whether or not there were any communications, by letter or otherwise, in the year 1864, between Alabama and that portion of Texas in which the complainants, William, Sarah, and Narcissa Lockhart lived, and up to June or July, of 1864. If you know of any letter or letters passing between any of the complainants and any of the other parties to this suit in the spring of 1864, state all you know about it fully and particularly, giving the day and month when received as nearly as you can. State, (if you know,) whether or not the complainants, or either of them, knew of said final settlement of May, 1864, before it took place; and state whether or not said complainants, or either of them, knew of the time appointed for said settlement before it took place.

5. Int. 5. State whether or not you at any time heard or had any conversation with the defendants Frances L. Bryan or Elizabeth

332 P. Nabors, or either of them, in relation to their testimony in this case, or in relation to what they would swear or intended to swear in this case. If yes, state where said conversation occurred, who were present, and state said conversation in full, carefully, and particularly.

6. Int. 6. State whether or not you at any time heard said Frances L. Bryan use any remark or remarks as to there being a secret between herself and complainant William Lockhart about the will of John Horn, deceased. If yes, state what that remark or remarks were, and when they were made.

7. Int. 7. Do you or not know Charles Burrell and James Madison, witnesses in this case, who reside in Texas? How near do they live to the complainants, and are they or were they (said Charles and James) in the employ of the complainants or either of them? Where and with whom did said Charles and James formerly live, and what was their condition or status the year 1865? State whether any of the parties to this suit ever informed you what and how said Burrill and Madison would swear or testify in this case. If yes, state who such person

333 or persons were, and state what they said about it. State how said person or persons stated that the said Burrill and Madison would swear or testify in this case. What was the reason given by such person or persons for said Burrill and Madison swearing or testifying in any particular way in this case? State it all fully and particularly. If you have ever seen or read any letter or letters from any of the parties to this suit, stating how said Burrill and Madison would swear or testify in this case, state where said letters are, and attach them to your answer if you have them. State who wrote said letter or letters, and to whom they were written. State what was stated in said letter or

letters as to how and what said Burrill and Madison would swear in this case. State fully.

S. J. CUMMING, &
L. GIBBONS,
Sol'rs for J. A. C. Horn.

The said J. A. C. Horn suggests W. B. H. Howard and Brutus Howard, both of whom reside in Camden, Wilcox Co., Ala., as suitable persons to take the depositions of said witnesses.

S. J. CUMMING,
Sol'r for Horn.

Filed March 18th, 1871.

N. W. TRIMBLE, *Clerk.*

334 *Marshal's return.*

Rec'd M. O., March 20th, 1861, and executed by serving copy of the within interrogatories on W'm Boyles, March 21st, 1871.

R. W. HEALY,
U. S. Marshal.
By GEO. COTTIN, *Deputy.*

WILLIAM LOCKHART & WIFE ET ALS., COMplainants,
vs.
JOHN A. C. HORN AND OTHERS, DEFENDANTS. } In equity.

In the circuit court of the United States of America, at Mobile.

(The complainants object to the examination of Leonidas L. Bryan as a witness in the above-stated case, upon the ground that it has been more that three months since said cause was at issue, and no application has been made to the court to enlarge the time for taking depositions in the case.

Not waiving, but expressly reserving the foregoing objection, the complainants, in the event said objection should be overruled by the court, the complainants except to so much of the 4th interroga-
335 tory as asks witness to speak of letters, unless they are produced or shown to be lost or destroyed, and will move the court to suppress the answer to the same, unless the original letters are produced, or their loss or destruction shown.)

The complainants propound the following cross-interrogatories to said witness, the answers to the same to be read in evidence, if the objection to the examination of said witness should be overruled by the court.

Cross-interrogatory 1st. When and where was the will of Jno. Horn, deceased, propounded for probate? Did you ever see the last will and testament of said John Horn? If so, when and where did you see it; who had the possession of it at the time?

2nd. Who were the heirs of said John Horn, deceased? Where did each of them reside at the time of the death of said Jno. Horn?

3rd. If you should state that any one or more of said heirs were represented by an attorney or attorneys upon the contest of the
336 will of said Horn, then please name them and state the name or names of the attorneys, and how you know they were employed to represent the parties named. Do you know, of your own knowledge,

that either of the complainants were represented on said contest by attorney? If so, do you know the fact of your knowledge?

4th. Was there ever any final settlement of said estate made; were you present at the time; were either of the complainants present at the time; if not, can you state of your own knowledge that they were represented by attorney; if so, how do you know the fact of your own knowledge?

5th. Can you state, of your own knowledge, that there was any communication between the States of Texas and Alabama in 1864? If so, how do you know the fact? If you should speak of any letter or letters written by the complainants, or either of them, to any of the parties to this suit, please attach the same, if you can, to your answer to this cross interrogatory. If you should state that the complainants, or either of them, knew of the time appointed for said settlement
337 before it took place, then please state if you know this fact of your knowledge.

6th. If you should state that you have had any conversation with Frances L. Bryan or Elizabeth P. Nabors, or either of them, in relation to their testimony in the above stated case, then please state when and where you had such conversation or conversations, and who was present at the time besides yourself. Did either of said parties say to you that they had been examined as witnesses in this case; if so, what lead to the conversation? Were you asked by any one if you had been examined as a witness, or that you expected to be examined; if so, state, if you can, all that was said at the time by either or both of said parties?

7th. If you should say that you ever heard Frances L. Bryan say or remark that there was a secret between herself and W'm Lockhart about the will of Jno. Horn, deceased, then please state when and where this occurred. Who was present at the time?

8th. Were you in the State of Texas, that is, that portion of the State in which complainants reside; if so, when, and how long
338 did you remain there? Do you know, of your own knowledge, that Charles Burrell & James Madison, named in the 7th interrogatory, reside in Texas; if so, how do you know the fact? If you should state that any of the parties to this suit ever said to you that said Burrell and Madison would be examined in this case; if so, when and where this was said, and by whom, and who was present at the time?

9th. If you speak of letters not produced by you, then state, if you can state substantially, the whole contents of said letter or letters.

JNO. T. MORGAN &
BOYLES & OVERALL,
Sol's for Complainants.

The complainants' counsel, Jno. T. Morgan, esq'r', requires notice of the time and place of taking the deposition of said witness.

JNO. T. MORGAN &
BOYLES & OVERALL,
So'ls for Compl'ts.

Jno. T. Morgan, complainants' solicitors, requires written notice of the time and place of taking the deposition.

N. W. TRIMBLE, *Clerk.*

339 At the office of Brutus Howard, in Camden, Wilcox County, Alabama, April 22nd, 1871.

Deposition of Leonidas L. Bryan, witness sworn and examined under and by virtue of a commission issued out of the United States circuit court, southern district of Alabama, in a certain cause therein depending between William Lockhart and wife, et al., vs. John A. C. Horn, ex'or, Leonidas L. Bryan et al.

At the time and place above-mentioned, the said Leonidas L. Bryan, being duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To the first interrogatory he saith: I am a defendant, nominally speaking, in the case above stated between William Lockhart and wife and others vs. Jno. A. C. Horn, ex'r, and others. I am acquainted with the complainants in said case, named in the first interrogatory, excepting Nacissa Lockhart. I am related to William Lockhart, by having married a sister of his wife, and to Sarah and Narcissa Lockhart, by
340 having married their sister, my present wife. William Lockhart was a son-in-law to John Horn, deceased, late of Marengo County, Ala., having married a daughter of his, Sarah. Sarah Lockhart and Narcissa Lockhart were daughters of said John Horn, deceased. Said complainants reside in Corsicana, Navarro County, Texas, and have been residing there a long time—don't know how long, but they were living or residing there as far back as 1854 or 1855, as near as I can remember.

To second interrogatory he saith: I was not present at the contest on the propounding of John Horn's will for probate, in the probate court of Marengo County, Ala., in 1858. I cannot state who was present at said contest on the propounding of said will for probate, except from hearsay. I heard from my wife that she was present in person at said contest for probating said will, and heard from her that she was represented by an attorney on said contest. When I say I heard from my wife, I mean that she herself told me. I don't know, either of my own knowledge or otherwise, that any of the other heirs of said John Horn, deceased, were present at said contest, or were represented by attorneys or not, except that, to the best of my recollection, I heard
341 my wife say that William E. Craft had employed Hart & Webb as attorneys to represent the heirs in Texas in said contest.

To the third interrogatory he saith: My wife, Francis L. Bryan, told me that she was represented by an attorney or attorneys, on the final settlement of the estate of John Horn, dec'd, in the probate court of Marengo County, Ala.; she said she was represented either by Hart & Webb or Clark & Terrill, attorneys at law, but I don't remember by which of the two firms. In 1868, I heard William Lockhart say that he and the other heirs in Texas had sent an attorney at law out here, (William E. Croft, I think,) to look after their interests in the estate of John Horn, dec'd. Don't remember whether he said this attorney came out before or after the final settlement of said Horn's estate, or before or after the probating of the will of said Horn, but heard him say they sent him out and paid his expenses to come. William Lockhart said also that he and one William McPhail, (said McPhail being one of the parties to this suit, and a husband of one of the daughters of said Horn, dec'd —Mary her name,) had been out here to see about the estate of
342 said John Horn, deceased, and had been to a great expense in paying their way out and back, and in paying lawyers' fees, and

that these expenses had been incurred and the fees paid by them for the purpose of looking after and attending to the recovery of their interests in said John Horn's estate in general. Don't remember whether they said these expenses were incurred and fees paid by them before or after the contest on the probating of the will of said Horn, dec'd, or at what time. He (Lockhart) spoke generally.

To the 4th interrogatory he saith: I don't know, of my own knowledge, that there was or was not any communication, by letter or otherwise, between Alabama and that portion of Texas in which the complainants, William, Sarah, and Narcissa Lockhart lived, in the year 1864; but I recollect hearing my wife say in 1867, that she had received *as* her mother had received a letter from some one of the Lockhart family in Texas, in the year 1864, and, to the best of my recollection, in April of that year; don't remember the day of the month; and my wife stated stated to me that this letter stated the death of Charles Lockhart, husband of Narcissa Lockhart. This was all I remember my wife's
343 telling me about the contents of this letter. I heard my wife speak of having received other letters during the late war from the Lockhart family in Texas. Don't remember the dates of these letters, nor when received. I don't know that any of the complainants knew of said final settlement of Horn's estate in May, 1864, excepting my wife; nor do I know whether or not any of complainants knew of the time appointed for said final settlement, except my wife, who, (my wife,) must have known, as she said she was present at the settlement.

To the 5th int'y he saith: I had a conversation with my wife, Francis L. Bryan, one of the defendants in this case, and with Elizabeth P. Nabors, in relation to what they would swear or testify to in this case. My conversation with my wife occurred in Camden, Wilcox County, Ala., in the latter part of 1867, or the first of 1868; don't remember what month. No one was present but my wife and myself, that I know of. I heard my wife in this conversation say that she was going to see her sister Mrs. Elizabeth P. Nabors, at Columbiana, in this State, to post her up, so that her testimony, which was to be taken in this case,
344 (in which I am now testifying,) would corroborate with her, my wife's testimony, in the same case. My wife did, after this, go to Columbiana. I went to Columbiana after my wife went; and after I got there, my wife told me that Mrs. Elizabeth P. Nabors' deposition in this case had been taken, and that she, Mrs. Elizabeth P. Nabors, while her deposition was being taken, had a copy of her, (my wife's,) deposition, which had been previously taken, before her, so as to make their depositions corroborate. At Linden, in Marengo County, Alabama, in the year 1867, before Mrs. Elizabeth P. Nabors' deposition in this case was taken, I heard her, (Mrs. Nabors,) say that she would swear to any thing, right or wrong, in this case, to burst up John A. C. Horn, one of the defendants in this case, and to bring his and his family's noses to the grind-stone. Afterwards, in the year 1868 at Columbiana, in Alabama, said Mrs. Nabors told me that her (Mrs. Nabors') deposition had been taken, and that while her said deposition was being taken, she had a copy of my wife's deposition before her, so as to make them corroborate, and that her deposition was fixed up so as to corrob-
345 orate with my wife's deposition. No one else was present in any of the above conversations.

To the 6th interrogatory he saith: In the year 1867, on the way from Linden, in Marengo County, Ala., I told my wife, Francis L. Bryan, while we were talking about the estate of John Horn, deceased, that

she and William Lockhart knew something about said dece'dent's will, and she replied that she and said Lockhart knew something about the said will which nobody else ever would know but themselves.

To the 7th interrogatory he saith: I knew two negroes, by the name of Charles and Mat., who, when I knew them, belonged to John Horn, deceased, in Marengo County, Ala.; and I know that Charles Burnell and James Madison, who are spoken of and mentioned in the 7th interrogatory, are the same and identical Charles and Mat whom I knew as belonging to said Horn; and I know this from what I heard from William Lockhart, *and* of the complainants, while he was out here, in the year 1868, who, at that time, said that he had got them or could get them, (to the best of my memory, he had got them,) Charles and
346 Mat, calling. them by those, names, to swear to all that he wanted them to swear to in this case; and I know from what said Lockhart said to me about said Charles and Mat., that they are the same and identical persons spoken of as Charles Burnell and James Madison. At the time said Lockhart spoke about said Charles and Mat. he spoke of them as being in Texas, and spoke of them as living near him or in his or in William McPhaill's employ. From what I heard Lockhart say, he and said McPhaill were living near each other, and in the same town. The said two negroes above spoken of formerly lived in Marengo County, Ala., and were slaves before the year 1865. The way said Lockhart come to tell me about how the said two negroes would swear in this case, was, that we were talking together about this suit in which I am now testifying. I read a letter, addressed to me, and from William McPhaill, a party to this suit, who lived at the time in Texas; and in that letter, said McPhaill said that he could get Charles and Mat., calling them by those names, to swear to whatever he wanted them to swear to in this case. I know that these two persons, Mat.
347 and Charles are identical with Charles Burrell and James Madison, for the same reasons I have already given in answering this interrogatory. This letter is not now in my possession, my wife having taken it with her, who is not living with me, but in Texas, with William Lockhart.

(Signed) L. L. BRYAN.

Answer of witness to cross-interrogatories.

Answer to cross-interrogatory 1. I don't know, of my own knowledge, when the will of John Horn, deceased, was propounded for probate, but, to the best of my information it was propounded for probate in Marengo County, Ala. I have seen what purported to be a copy of the last will and testament of John Horn, deceased, and it was then in the possession of Benjamin Williamson, a lawyer in Camden, Ala., who got it for me from the probate office in Marengo County, Ala., as he said; and I got a copy of said will from the same place myself, at a different time. I have never seen the original will.

To second cross-interrogatory he saith: John A. C. Horn, Sarah Lockhart, wife of William Lockhart, Narcissa Lockhart, wife
348 of Charles Lockhart, Mary McPhaill, wife of William McPhaill, Elizabeth P. Nabors, wife of B. O. Nabors, and Francis L. Bryan, my wife, are the heirs of John Horn, deceased; all of whom are the children of said Horn, deceased. Don't remember where they resided at the time of said Horn's death, not even where I resided myself, not having then any permanent home.

To 3rd cross-int'y he saith: For my answer to this cross-interrogatory

I refer to my answer to the second direct interrogatory, which contains all I know or now recollect on this subject.

To the 4th cross-int'y he saith: I don't know whether or not there was ever a final settlement of said Horn's estate. I was not present at what is called the final settlement or any other settlement of said estate. Don't know whether any of the complainants were present at said final settlement or not, except from what my wife said, who said she was present. Don't know anything about the complainants being represented by attorneys on said final settlement, except what I have
349 already stated in my answer to the third direct interrogatory.

To 5th cross-interrogatory he saith: I don't know, of my own knowledge, that there was any communication between the States of Texas & Alabama, in 1864, but saw soldiers in the confederate army at that time, 1864, who said they had come from Texas to Alabama, and said they had letters and packages with them, brought from Texas to Alabama. I have no letter or letters in my possession or under my control, written by any of the parties to this suit, and am unable to attach them to my deposition. For what I know about any of the complainants having known of the time appointed for said final settlement, I refer to the last part of my answer to the 4th direct interrogatory.

To the 6th cross-int'y he saith: For my answer to this interrogatory I refer to my answer to the 5th (5th) direct interrogatory. Don't know what led to the conversations, but that we were talking about the estate. No one ever asked me either before, during, or since said conversations whether I had been examined as a witness or expected to be examined, not that I can remember.

350 To 7th cross-interrogatory he saith: There was no one present but my wife and myself during the conversation about there being a secret between her and William Lockhart about the will of John Horn, dec'd. For the rest of my answer to cross-interrogatory, I refer to my answer to the 6th direct interrogatory.

To 8th cross-int'y he saith: I have never been in that portion of Texas in which compiainants reside. Don't know of my own knowledge that Charles Burrell and James Madison, the two negroes spoken of in the 7th direct interrogatory, reside in Texas, and refer to my answers to said interrogatory for my answer to the rest of this cross-interrogatory. No one was present when William Lockhart told me what I have spoken of in my answer to said interrogatory.

To 9th cross-int'y he saith: Can't recollect substantially the whole contents of the letters I have spoken of in my deposition. I remember that William McPhaill, in his letter to me, told me to do all I could for him and all the rest of the heirs in this suit against Jno. A. C. Horn.

(Signed) L. L. BRYAN.

351 *Notice to John T. Morgan.*

STATE OF ALABAMA, *Wilcox County:*

To Jno. T. Morgan, esquire, greeting:

This it to notify you that I, Brutus Howard, (one of the commissioners appointed to take the deposition of Leonidas L. Bryan, in answer to the interrogatories and cross-interrogatories filed in the case of William Lockhart and wife, and others, vs. John A. C. Horn, Leonidas L. Bryan, and others, now pending in the United States circuit court for the southern district of Alabama,) have, as said commissioner, issued a subpœna to the said Leonidas L. Bryan to appear before me as said com-

missioner, at my offiee in Camden, Wilcox County, Alabama, on the 12th day of April, 1871, then and there to answer on his oath, the questions propounded to him in said interrogatories and cross-interrogatories, at which time and place I will take the deposition of said witness Leonidas L. Bryan, when and where you can attend, if you see fit so to do.

Witness my hand this 31st day of March, 1871.

BRUTUS HOWARD,
Commissioner.

Subpœna not having been executed on witness, April 22nd, 1871, was set for taking his deposition, and alias notice issued to Jno. T. Morgan.

B. HOWARD, *Commissioner.*

352 The witness Leonidas L. Bryan, not appearing on the 12th day of April, 1871, the subpœna not having been executed on him in time, another day, the 22nd of April, 1871, was set for taking the deposition of said witness, at my office in Camden, Wilcox Co., Ala., and another notice by me issued to Jno. T. Morgan, esq'r, to that effect.

Witness.

BRUTUS HOWARD,
Commissioner.

Service accepted, but objection is made to the competency of Leonidas Bryan to give evidence against his wife Francis Bryan.

MORGAN & LAPSLEY,
Sol's for Compl't.

APRIL 10, 1871.

I, Brutus Howard, commissioner as aforesaid, do further certify that I have personal knowledge of the personal identity of the witness Leonidas L. Bryan, whose name is signed to the foregoing deposition as L. L. Bryan, and that the deposition aforesaid of said Bryan was reduced to writing by me, said witness having been first duly sworn to speak the truth, the whole truth, and nothing but the truth, and that said deposition after being so reduced to writing, was read over to said
353 witness, and by him fully approved, and that said deposition was subscribed by said witness in my presence, at my office in Camden, Wilcox County, Ala., on the 22nd day of April, 1871, that being the time and place appointed for the taking of said deposition.

Given under my hand and seal this the 22nd day of April, 1871.

BRUTUS HOWARD, [SEAL.]
Commissioner.

354 *Opinion.*

United States circuit court for the southern district of Alabama.

WILLIAM LOCKHART AND SARAH A., HIS wife, et al., *vs.* JOHN A. C. HORN, EXECUTOR, ET ALS.	In equity.

The complainants, Sarah A. and Narcissa Lockhart, are daughters of John Horn, deceased. The defendants are his only son, John A. C. Horn, and his three other daughters, Frances L. Bryan, Elizabeth P.

Nabors, and Mary McPhail and their husbands, and the administrator of Rebecca Horn, widow of the deceased.

The bill is filed for two objects:

First. To contest the validity of the will of John Horn, deceased, admitted to probate in Marengo County, 13th of Sept., 1858, at the instance of John A. C. Horn, executor and principal devisee.

Secondly. To recover from said John the distributive share of said complainants in the estate of their father, or in case the will be not broken, to recover from him the balance due them as legatees under the will.

355 The complainants are residents of Texas. The defendants are all residents of Alabama, except Mary McPhail and her husband, W'm McPhail, who reside in Texas.

The relief sought is sought entirely against John A. C. Horn, but the other defendants are made parties, because they have an interest in the estate.

W'm McPhail and wife, though not served with process, have voluntarily appeared and put in an answer admitting the truth of the statements made by the bill, and praying a decree for Mary McPhail's share of the estate.

The first aspect of the bill is founded on a statute of Alabama, which, after prescribing the mode in which a will may be propounded and contested, enacts that any person interested in a will, who has not contested it as provided by the act, may at any time within five years after the admission of the will to probate, contest its validity by bill in chancery.

The complainants allege that they did not contest the will when it was admitted to probate; and as to the limit of five years for filing the bill, they plead the civil war, and the laws passed in suspension

356 of the statutes of limitation.

The leading facts, as they appear by the pleadings and evidence, are as follows:

John Horn, of Marengo County, Alabama, died March, 1858, leaving a large estate in lands, negroes, and personal property, and leaving a widow and six children. Some time about May, 1857, the deceased, John Horn, made a will which was in existence up to short time prior to his death. His son, John A. C. Horn, alleges that it was fraudulently purloined and destroyed, either during the decedent's illness or after his death. The daughters allege that their father voluntarily cancelled and destroyed the will before his death.

Soon after the death of John Horn, his son procured himself to be appointed administrator ad colligendum, and by petition in the probate court of Marengo County, set up a paper which he alleged to be a true copy of John Horn's will, with allegations as to its spoliation, &c., and praying that it might be established as his will.

The widow and all the children residing in Alabama were duly cited to appear and show cause why the alleged will should not be ad-

357 mitted to probate. As the complainants and McPhail and wife resided in Texas, a notice of the time and place set for the hearing was duly published in a newspaper, as authorized and required by the laws of Alabama.

By these laws any party in interest who wishes to contest a will offered for probate, must file in the court allegations in writing, stating the ground of contestation, (Rev. C. S., 1953.) It appears from the record of the proceedings, that two of the daughters, Frances L. Bryan and Elizabeth P. Dumas, afterwards Nabors, in their proper persons,

and Mary McPhail, with her husband, W'm McPhail, by their attorney, appeared and contested the probate. It does not appear that the others made any legal contestation. The cause was tried by a jury according to the laws of Alabama, and the will was established by their verdict and the judgment of the court on the 13th September, 1858; and 22nd November following letters testamentary were issued to John A. C. Horn, as the executor.

By the will thus established, the homestead plantation, of 720 acres, was given to John A. C. Horn, after his mother's decease, and a smaller tract, of 208 acres, was directed to be sold and the proceeds di-
358 vided equally amongst the daughters. The residue of the estate, after charging the daughters with certain advances made to them by testator in his life-time, was to be equally divided between all the children. The widow repudiated the will and claimed her dower.

On the 29th December, 1858, by order of the court, a division of the slaves of testator, 78 in number, was made between his widow and children, by commissioners appointed for the purpose, and upon a valuation then made, the daughters being charged with the respective advances named in the will as made to them in their father's life time. They severally, with their husbands, receipted for the slaves which were assigned to them in this division. W'm A. Lockhart gave a receipt for his wife, as follows:

"Received of John A. C. Horn, executor of John Horn, deceased, the following slaves, to wit, (giving their names and values,) which is in full of my distributive share of the negro property of said John Horn, deceased, in the division of the same, the commissioners having charged me with $4,400, the amount of the advance mentioned in the will of the said John Horn, deceased.

(Signed) "W. A. LOCKHART,
"*Agent for S. A. Lockhart.*

"Attest: E. R. SHOWALTER."

359 A similar receipt was given by Narcissa Lockhart and her husband, who was then living. At the same time the executor made payments of money to the daughters, which were duly receipted for. The receipt given by W'm Lockhart was as follows:

"Received of John A. C. Horn, executor of John Horn, deceased, two thousand and eighty dollars in part payment of my claim in the estate of John Horn, deceased, this January 10th, 1859.

(Signed) "W. A. LOCKHART,
"*Trustee of S. A. Lockhart.*"

A similar receipt of the same date and amount was given by Narcissa Lockhart and her husband.

In October term, 1859, of the same probate court, Jno. A. C. Horn, the executor, filed a partial account of his administration, including his sales of property and the said division of slaves. Due notice of exhibiting the account was published as required by the laws of Alabama, and William Lockhart and his wife; Charles J. C. Lockhart and Narcissa, his wife; William McPhail and his wife, and Frances L. Bryan, contested the account as to various items thereof. A decree was finally made on the 21st of May, 1860, by which it declared that the ex-
360 ecutor had in his hands for distribution, $10,783.50 proceeds of the land to be sold and divided among the daughters, and $5,159.11 proceeds of personal property to be divided among the widow and children in accordance with the will, specifying the amount payable to

each. By this account it appeared that Charles Lockhart and Narcissa, his wife, were indebted to the executor for a small sum, he having already made them a payment as before stated, and that there was due from him to W'm Lockhart and Sarah, his wife, $6,089, over and above the payments made to them.

This sum was paid, and W'm Lockhart gave a receipt for the amount, as follows:

"Received of Jno. A. C. Horn, executor of the last will and testament of John Horn, deceased, six hundred and eight dollars and nine cents, in full of the amount decreed by the probate court of Marengo County, in May, 1860, in favor of my wife Sarah A. Lockhart and myself, in partial settlement made by said John A. C. Horn, under said will, May 26th, 1860.

(Signed) "W. A. LOCKHART.

"Witness: G. W. COLTON."

In August, 1860, and January, 1861, citations were issued at the suit of the daughters, or some of them, to call the executor to a final
361 account. There was still a balance in his hands due from James B. Craighead, the purchaser of the real estate, devised for the benefit of the daughters. It had been sold on 8th of January, 1859, on a credit of twelve months, for $10,400, of which $6,240 had been paid in good money by the purchaser, Craighead, and included in the partial account settled in May, 1860. But there was still a balance due of $4,160, besides interest. Craighead died, according to Horn's testimony, in June, 1859. His wife took out letters of administration on his estate. By the laws of Alabama an administrator cannot be sued until after six months from the grant of letters of administration, and judgment cannot be rendered until the expiration of eighteen months therefrom. The whole sum became due in January, 1860, and suit could have been immediately brought and judgment could have been obtained by the month of January, 1861. But the executor did not bring suit, and did not collect the balance until October, 1862, when he was obliged to take confederate notes, worth, at that time, only about thirty-six cents to the dollar. Of these he received the sum of $5,075.20 in satisfaction of the debt. He kept this money, and other
362 money of the estate, received in confederate funds, in his hands until March, 1864, when, under laws then existing, he deposited $7,900 thereof, as executor, in the Confederate States depository office at Selma, Ala., and received a certificate entitling him to Confederate States four per cent. bonds to that amount. The receiving of money by Horn, as executor, in confederate notes, and the investment of said notes in confederate bonds, were in strict accordance with laws passed by the legislature of Alabama, in November, 1861, and November, 1863, whilst that State was engaged in civil war with the United States.

In May, 1864, the final accounts of the executor were passed in the probate court, after due publication of notice, and he resigned his executorship in accordance with the laws of Alabama. The final decree recites the fact that it appeared that the executor had invested the moneys of the estate in his hands in four per cent. confederate bonds, and approved and confirmed the same, and directed the several shares of the widow and children of the deceased to be paid to them in said bonds. The amount due to the complainants, according to the decree, was to W'm Lockhart and Sarah A., his wife, $1,295.78, and to
363 Cha's J. Lockhart and Narcissa, his wife, $1,209.19.

Upon this case the following questions arise:

1st. The first question is as to the jurisdiction of the court. Two of the defendants, McPhail and wife, are of the same State with the complainants. Is that fact fatal to the jurisdiction, these defendants having voluntarily appeared and answered, and not having objected to the jurisdiction, and no objection of that kind being taken until the present time, the fact of their residence in Texas, however, appearing in the bill itself? Were this an original question, I should say that the fact of a common State citizenship existing between the complainants and a part only of the defendants, provided the other defendants were citizens of the proper State, would not oust the court of jurisdiction. It certainly would not under the Constitution. The case would still be a controversy between citizens of different States. But the strict construction put by the courts upon the judiciary act is decisive against the jurisdiction, and I am bound by it. Nevertheless, the case is such, that complainant may dismiss his bill as to the obnoxious defendants,
364 and hold it as to the others. I will permit him to do so. This should be allowed in all cases where the objection is not made in limine.

In this case I do not regard McPhail and wife as absolutely essential parties. The suit is really a suit against John A. C. Horn. Whether the plaintiffs are successful or unsuccessful will make no difference as to the rights of McPhail and wife. They cannot contest the will, for they have once done so. If the complainants succeed in breaking the will, they may, perhaps, ultimately participate in the advantages of it, if such is the law of Alabama. But it will be their good fortune rather than their right. Any rights which they may have will be unprejudiced by the result of the suit. I will, therefore, allow the complainants to dismiss the bill as to them.

2nd. The next question relates to the limitation of five years. The will was admitted to probate on the 13th of September, 1858; this suit was instituted the 15th of November, 1867, a distance of 9 years, 2 months, and 2 days—too late by 4 years, 2 months, and 2 days, unless the statute was suspended by some law or other cause. The complainant relies on several grounds for a suspension of the limitation.
365 First, the fact that civil war was raging in Alabama and other States from January 11, 1861, when the act of secession was adopted, to the close of hostilities and the restoration of order in the summer or fall of 1865. I do not agree that this was a sufficient ground for the suspension of legal remedies and acts of limitation as between the citizens of the Confederate States any more than it would be as between citizens of States which adhered to the Federal Government. It is a fact that the courts of Alabama were open to all the citizens of the Confederate States, and there was no law to prohibit them from resorting thereto. Were the statutes of limitation of the several States, or of any of them, suspended during the war of 1812, because the British forces occupied part of our territory, or because the war was raging in portions of the country? Unless a country is actually occupied by hostile forces, and its laws and courts are suppressed, it would be giving to the courts too large a discretion to allow them to decide when and when not the statutes of limitation are in operation as between their own citizens only.

This being a question as to the general effect of a war on reme-
366 dies and statutes of limitation, I do not feel that I am bound by the decisions of the supreme court of this State.

The next ground relied on by the complainants for a suspension of the statutes, is the ordinance of 21st September, 1865, passed by the constitutional convention assembled at Montgomery under the proclamation of President Johnson, by which it was declared that in computing the time necessary to create the bar of the statutes of limitation and non-claim, the time elapsing between the 11th of January, 1861, and the passage of that ordinance should not be estimated. Suppose the acts of this convention to have been valid as laws until abrogated and repealed, (for which many reasons may be urged,) still the whole period of five years had already run when this ordinance was passed, and the effect of it, as applied to this case, was to revive a claim already extinct. This would be to interfere with rights already vested, and would be an unconstitutional application of the law.

The remaining ground for supposing that the limitation of the statute was suspended, is the act of Congress of June 11th, 1864, (13 Stat. 123,) by which it is enacted, in substance: that whenever, during the existence of the rebellion, resistance to the laws or interruption
367 of the ordinary course of judicial proceedings prevented the prosecution of an action, the statute of limitation should not run. But this statute has in no case been construed to apply to a case arising between citizens of the same section of the country; and if it may even be so applied, I think it cannot be in this case. For it is not true that the proceedings of the courts here were so interrupted as to prevent the prosecution of suits therein by citizens of any of the Confederate States, except for brief periods of time. I am not referred to any other laws affecting this question.

In my judgment, therefore, the statutory limitation for bringing this suit as a means of contesting the validity of the will of John Horn, had expired when the bill was filed; and as to that portion of the relief sought, the bill must be dismissed.

I am further of opinion that the complainants, by their own acts, were estopped from filing a bill for that purpose. After the will was admitted to probate, they twice received, without objection or protest, dividends of the property of Jno. Horn, founded on the directions of his will, and gave to Jno. A. C. Horn, as executor thereof, acquittances therefor. In this they recognized the will, and recognized Jno.
368 A. C. Horn as the executor thereof, and they cannot now come into a court of equity without any allegation of fraud or concealment or newly-discovered evidence, and claim to have the will set aside.

3rd. But the other ground of relief still remains, namely: the claim of the complainants against the executor for the balance of their legacies.

I see nothing in the case to question the accuracy of the amounts found due to the complainants by the decree of May, 1864. The question is, whether the defendant can exonorate himself by paying those amounts in confederate bonds in accordance with the decree.

As a general rule, in my judgment, all transactions, judgments, and decrees, which took place in conformity with existing laws in the Confederate States, between the citizens thereof during the late war, except such as were directly in aid of the rebellion, ought to stand good. The exception, namely, of such transactions as were directly in aid of the rebellion, is a political necessity required by the dignity of the United States Government, and by every principle of fidelity to the Constitution and laws of our common country. By this rule the present case

must be judged, and by this rule the deposit of the $7,900, money
369 of the estate, in the depository of the Confederate States at Selma, can not be sustained: it was a direct contribution to the resources of the confederate government.

The defendant, then, must be considered chargeable with the confederate treasury notes which he so deposited. And the next question is whether he can discharge himself by paying the legacies in such notes. It will be remembered that the greater part of that balance in his hands had become due January, 1860, and he does not show us when the remainder became due. It is fair to suppose, therefore, that it all became due as early as that date. He could not have obtained judgment against Craighead's estate until January, 1861, it is true. But it does not appear that he could not have collected the money by the exercise of proper diligence without suit. And if he had brought suit and perfected his judgment by January, 1861, he would still have been in time to have collected the amount due in good money. The complainants were urging him to proceed as early as August, 1860. He was cited to settle up his account, and the citation was repeated in January, 1861.

I cannot but regard the executor as liable for the balance due
370 in lawful money, with interest to the present time. He has not shown sufficient excuse for not collecting the funds of the estate before the war commenced. Had he shown such an excuse, I should have felt bound to charge him only with the value of the funds at the time when he received them, with a reasonable allowance of time for making a settlement.

It may be urged that the decree of the probate court made in May, 1864, is conclusive on the question of the executor's diligence in the collection of the money due the estate. But a careful examination of that decree shows that this question was not passed upon by the court. By the laws then existing an executor was exonerated by investing his funds in confederate bonds. Horn having thus invested the funds in his hands the court did not deem it necessary to look farther, but decreed him to be within the protection of the statutes. That decree, as before shown, cannot avail him in this case.

Had the court decided the question of diligence, I should have deemed its decision on that point conclusive.

A decree will be made for the amount found to be due the complainants by the settlement in May, 1864, with lawful interest
371 thereon to the present time.

Filed June 2, 1871.

N. W. TRIMBLE, *Clerk.*

372 *Final decree.*

Circuit court of the United States for the fifth judicial circuit and southern district of Alabama.

FRIDAY MORNING, *June 2nd*, 1871.

Court met pursuant to adjournment. Present, the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States.

* * * * * *

WILLIAM LOCKHART AND SARAH A., HIS wife, and Narcissa Lockhart,
vs.
JOHN A. C. HORN, LEONIDAS L. BRYAN AND Frances L. Bryan, his wife, Belton O.
373 Nabors and Elizabeth P., his wife, and others.

This cause coming on to be heard upon the pleadings and proofs, and being argued by Mr. Boyles, on behalf of the complainants, and Messrs. Gibbons and Cummings, on behalf of the defendant John A. C. Horn; and the counsel of the said defendant, having, amongst other things, objected to the jurisdiction of the court over this cause, by reason of the fact that William McPhail and Mary McPhail, two of the defendants, are citizens and residents of the State of Texas, being the same State of which the complainants are citizens; and the court being of opinion that the said William McPhail and Mary, his wife, are not essential parties to the suit, gave leave to the complainants to dismiss the bill as to them. Whereupon, on motion of the counsel for the complainants, it is ordered and decreed that the bill of complaint be dismissed as to the defendants William McPhaill and Mary, his wife; and, as to other matters in controversy in the cause, it is ordered, adjudged, and decreed by the court that the said bill of complaint be also dismissed as to so much and such part thereof as seeks to set aside or invalidate
374 the last will and testament of John Horn, deceased, which was admitted to probate by the probate court of Marengo County, of Alabama, on or about the thirteenth day of September, in the year eighteen hundred and fifty-eight, and that the complainants do pay to the defendant John A. C. Horn the costs and expenses of taking depositions in relation to the validity of said will. It is further ordered, adjudged, and decreed that the defendant John A. C. Horn do pay to the complainants, respectively, in lawful money of the United States, the several amounts which were adjudged to be due to them by the decree of said probate court, made on the second day of May, in the year eighteen hundred and sixty-four, together with lawful interest thereon from said date to the date of this decree; that is to say, the sum of twelve hundred and ninety-five ($1,295.78) dollars and seventy-eight cents, and interest as aforesaid, to the said William Lockhart and Sarah A., his wife; and the sum of twelve hundred and ($1,207.17) seven dollars and seventeen cents, and interest as aforesaid, to the said Narcissa Lockhart; and it is further ordered and decreed that the remaining defendants be authorized to make application for such order and relief as
375 they may be entitled to ask on the principles of this decree, and that neither party pay any costs to the other, except as hereinbefore stated and decreed.

And the defendant John A. C. Horn comes by his counsel, and prays an appeal from so much of the above decree as relates to the payments to be made by him to complainants to the Supreme Court of the United States; which is allowed, on his entering into bond, with good security, in the sum of ten thousand dollars, according to the statute in such case made and provided.

* * * * * *

Appeal bond.

Circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

WILLIAM LOCKHART AND WIFE AND NARcissa P. Lockhart
vs.
JOHN A. C. HORN, EXECUTOR OF JOHN HORN, dec'd, et als.
} No. 16. In equity.

Know all men by these presents that we, John A. C. Horn, George F. Watson, and Erastus S. Perryman, are held and firmly bound unto William Lockhart, Sarah A. Lockhart, and Narcissa P. Lockhart,
376 in the sum of ten thousand ($10,000) dollars, in lawful money of the United States, to be paid to the said William Lockhart, Sarah A. Lockhart, and Narcissa P. Lockhart, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our heirs and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this 12th day of June, in the year of our Lord one thousand eight hundred and seventy-one.

The conditions of the above obligation is such, that whereas the above-named John A. C. Horn, executor of the last will and testament of John Horn, deceased, has prosecuted an appeal to the Supreme Court of the United United States from a decree in equity lately rendered against him in the circuit court of the United States for the 5th judicial circuit and southern district of Alabama, in a certain cause lately in said court pending, wherein William Lockhart, Sarah A. Lockhart, his wife, and Narcissa P. Lockhart were complainants, and John A. C. Horn, executor, &c., of John Horn, deceased, and others, were defendants, to
377 reverse the decree rendered in the above-entitled suit by said circuit court:

Now, therefore, the condition of this obligation is such, that if the above-named John A. C. Horn shall prosecute his appeal to effect, and answer all the requirements of said decree and the costs of this appeal if he should fail to make good his plea, then this obligation shall be null and void; otherwise the same shall be and remain in full force and effect.

(Signed) JOHN A. C. HORN. [SEAL.]
" GEO. F. WATSON. [SEAL.]
" E. S. PERRYMAN. [SEAL.]

Witness:
N. W. TRIMBLE, *Clerk, &c.*

Personally appeared before me, N. W. Trimble, clerk U. S. circuit court, southern district of Alabama, George F. Watson, who, being by me duly sworn, says he is worth over five thousand dollars in unencumbered real estate, situated in said district, over and above his just debts and liabilities and legal exemptions.

GEO. WATSON.

Subscribed and sworn to before me, this 14th day of June, A. D. 1871.
N. W. TRIMBLE, *Clerk, &c.*

378 Personally appeared before me, N. W. Trimble, clerk U. S. circuit court, southern district of Alabama, Erastus S. Perryman,

who, being by me duly sworn, says he is worth the sum of five thousand dollars in unencumbered real estate, situated in said district, over and above his just debts and liabilities and legal exemptions.

E. S. PERRYMAN.

Subscribed and sworn to before me this 14th day of June, A. D. 1871.

N. W. TRIMBLE, *Clerk, &c.*

We hereby waive the approval of this bond by the presiding judge.

BOYLES & OVERALL,
Solicitors for Complainants.

JUNE 14TH, 1871.

Filed June 14th, 1871.

N. W. TRIMBLE, *Clerk.*

379 In the circuit court of the United States for the fifth judicial circuit and southern district of Alabama. In equity.

I, Nathaniel W. Trimble, clerk of the court aforesaid, do hereby certify that the foregoing pages, numbered from 1 to 378, inclusive, contain a true and correct transcript of all the record and proceedings in the case of William Lockhart and Sarah, his wife, and Narcissa Lockhart, vs. John A. C. Horn, as executor, &c., et als., except the testimony in said cause, on that portion of the complainants' bill which was dismissed on the final decree.

In testimony whereof I hereunto subscribe my name and cause the seal of said circuit court to be affixed, this 19th day of October, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] N. W. TRIMBLE,
Clerk U. S. Circuit Court, Sou. Dis't Ala.

380 Supreme Court of the United States, fall term, 1871.

JOHN A. C. HORN
vs.
W'M LOCKHART & WIFE ET AL.

On appeal from the chancery court of the 5th judicial circuit of the United States for the southern district of Alabama.

And now comes the plaintiff in appeal, in his own proper person, and assigns the following errors in the decree of the court below:

1st. The court erred in not dismissing the whole case for want of jurisdiction on the motion made for that purpose in the court below.

2d. The court erred in not sustaining the original demurrer to the bill on & for the causes assigned therein.

3d. The court erred in not sustaining the pleas of the several statutes of limitations interposed to the revision of the final decree of the probate court of Marengo County, Ala.

4. The court erred in undertaking to revise the final decree of the probate court of Marengo County, when the same was not before it properly for revision.

5. The court erred in its revision of said decree, even if the
381 same were properly before it for revision, & ought, upon *upon* the

record & the testimony before it, to have dismissed the whole bill & affirmed the final decree of Marengo County.

6th. The court erred in its final decree as rendered upon the final decree of the probate court of Marengo County.

7. The court erred in not dismissing the whole bill at the complainants' costs.

JOHN A. C. HORN,
Solicitor pro se.

(Indorsement on cover:) No. 374. John A. C. Horn, appellant, vs. William Lockhart, Sarah A. Lockhart, & Narcissa P. Lockhart. S. Alabama C. C. U. S. Filed 10th November, 1871.

Supreme Court of United States.

No. 143.

JOHN A. C. HORN
vs.
LOCKHART, *et. al.*

Brief of P. PHILLIPS,

For Appellant.

H. Polkinhorn & Co., prs., Washington, D. C.

Supreme Court of United States.

No. 143.

JOHN A. C. HORN
vs.
LOCKHART, *et. al.*

Brief of P. PHILLIPS,

For Appellant.

The bill in this case was filed in the Circuit Court, United States, on the 15th November, 1867, by William Lockhart, Sarah his wife and Narcissa Lockhart, citizens of Texas, against John C. Horn and others, citizens of Alabama, together with William McPhail and Mary his wife, citizens of Texas.

It avers that John Horn died in Marengo, Alabama, in March, 1858. He left a widow, Rebecca, and the following children: John A. C. Horn (the appellant) Sarah Lockhart, Narcissa Lockhart, Mary McPhail, Francis L. Bryan, and Elizabeth Nabors; all the defendants but McPhail and wife are citizens of Alabama.

That the said John A. C. filed for probate on the 5th July, 1858 the will of his father, and this was established and admitted to probate at the September term of the court following; the complainants aver that as they were not

Supreme Court of United States.

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It avers that John Horn died in Marengo, Alabama, in March, 1858. He left a widow, Rebecca, and the following children: John A. C. Horn (the appellant) Sarah Lockhart, Narcissa Lockhart, Mary McPhail, Francis L. Bryan, and Elizabeth Nabors; all the defendants but McPhail and wife are citizens of Alabama.

That the said John A. C. filed for probate on the 5th July, 1858 the will of his father, and this was established and admitted to probate at the September term of the court following; the complainants aver that as they were not

present or represented, they were under the statutes of the State not precluded from controverting it.

That the said John A. C. in November, 1858, was appointed and qualified as executor; that he collected and received $30,000 belonging to said estate, which he should be made to account for to the heirs, or if the will be sustained to the legatees or devisees.

That the said executor in May, 1860, made a partial settlement in the Probate Court, but the complainants were not present, and had no "actual legal notice" (p. 3.)

That in May, 1864, he had a pretended final settlement and filed his resignation as executor.

That the only notice pretended to have been given, was by publication in a newspaper "which never reached orators." That owing to the presence of the armies, it was impossible for them to reach the place of settlement; that they had no agent present and in no manner participated in it; therefore, they assert the right to call the said executor to account as fully as though no settlement had been made.

The bill further avers, that the assets of the estate were received in sound funds, yet the said executor was allowed credit for the residue in his hands, because he alleged he had invested the same in the bonds of the Confederate States. This it is charged was a conversion which made him liable for the sum with interest. (p. 4.)

That the said executor was in possession of 720 acres of land which was devised to the widow for life, and after her death to the said John A. C., and if the will be sustained, still John A. C., was not entitled to the possession and enjoyment until after Rebecca's death. That he has enjoyed the rent of the lands from their

father's death. But your "orators charge that they in common with the other heirs are entitled to said lands in absolute right."

The bill prays—*First*, that the will be set aside and the estate be settled and distributed and the said John A. C., held to account with the persons entitled to distribution and inheritance.

Second, If it be not set aside then the executor be held to account "with your orators and the other legatees and devisees."

Subpœna is prayed against each of the defendants, and that McPhail and wife be made defendants if they come within the jurisdiction of the court (p. 5.)

Demurrer.

On the 18th February, 1868, a demurrer was filed by appellant, (p. 15.) in which, interalia, the jurisdiction of the court is denied on account of the parties—which was overruled by the District Judge, 6 May, 1868.

Answer.

On the 28th July, 1868, Horn filed his answer (p. 18.)

He sets forth all that relates to the will and its probate, which is not necessary to be referred to, as the decree sustains it.

He then shows his administration and his payments to the several legatees.

He denies that he is liable for the rent of any land belonging to said estate; that all the lands were sold on the 8th January, 1859, (p. 22.)

After averring that he had fully accounted, and prop-

erly administered, the answer refers to the settlement of 21st May, 1860, and avers that all the complainants were present or represented by their attorneys, and that they filed objections and exceptions (p. 23.)

The amount decreed to complainants by this settlement were paid to them and their receipts therefor are exhibited which show that they assented to the same.

On the 6th August, 1860, McPhail and Wife, and complainants made by their Attorney, application to compel the appellant to file his account for a final settlement, and this was repeated on 28 January, 1861, continuances were granted—and after due notice to all parties and on the first Monday, May, 1864, a decree on final settlement was made, and the appellant discharged from his trust.

That as to the 720 acres of land which the bill seek so to charge him with, he says, that as the widow dissented from the will, he became under the law entitled to the immediate possession thereof.

That all the money received by him, was in "sound funds," he denies. At the commencement of the war a large amount for lands sold to Craighead, on the 8th January, 1859, on a twelve months' credit was still due. The sale was for $10,000, on which was paid $6,240 in good money, which was accounted for in his partial settlement. Craighead died shortly after the purchase money became due, and by the laws of the State no judgment could be rendered against his estate until eighteen months after grant of administration, say in 1862-3, and it could then only be collected in Confederate notes.

That in October, 1862, he received from the administrator $5,075,20 in Confederate Treasury notes, the remainder of the purchase money.

That by an act of the Confederate Congress, then in force, those who refused to receive this money in payment of debts were to be taxed thereon as if such debts were gold. That in receiving this currency he acted in good faith and for the benefit of the estate, and received the same currency in all debts due in his private capacity.

The currency thus received was of the issue of 17th February, 1864, and known as the old issue, and as to this, an act of said Congress, which was also re-enacted by the State, provided, that if within a given period the said issue was not presented, to be funded in 4 per cent. bonds, they should not be receivable for taxes, and be subjected to a heavy taxation ; (see the act p. 77.)

That to preserve the interests of the estate he invested all the funds then belonging to it, $7,900, and received in lieu thereof, the aforesaid bonds, (p. 27.)

This investment was reported to the Probate Court, at the time he made the final settlement, and his action in the premises was approved and confirmed, which final settlement it is insisted is conclusive, and cannot be attached collaterally.

McPhail and wife filed their answer 16th April, 1868, in which they admit the truth of all the averments of the bill (p. 16,) and decrees pro confesso were entered against the other defendants.

Jurisdiction.

On the 26th May, 1871, the jurisdiction of the court was again challenged, and a motion to dismiss was made on the ground that McPhail and wife, two of defendants, were of the same State as the complainants—on this the court ordered that the cause, "proceed on its merits, the court reserving its opinion as to the question of jurisdiction." (p. 95.)

Decree.

The opinion of the court, is to be found at p. 133, and the decree at p. 140.

The probate of the will is sustained, but the executor is held to pay to the complainants the several amounts found due by the final settlement of 2d May, 1864, with interest from the date of the decree, in lawful money of the United States, and the bill is dismissed as to McPhail and wife, the court being of opinion that they are not essential parties to the suit.

Assignment of Error.

1st. The overruling of the demurrer, and the plea to the jurisdiction.

2d. The sustaining the jurisdiction after dismissing two of the defendants who were necessary parties to the bill.

3d. In holding that the final settlement of the Probate Court was not conclusive in this litigation.

4th. In holding the executor liable on the ground of negligence in not sooner collecting the debt due by Craighead, when no such charge is made by complainant's bill, and no evidence offerred by them to establish it.

5th. In decreeing the full amount of the sums found due on the settlement without regard to the value of the money at the time it was received.

ARGUMENT.

To test the correctness of this decree we give the following extracts from the opinion:

"In August, 1860, and January, 1861, citations were

issued at the suit of the daughters, or some of them, to call the executor to a final account. There was still a balance in his hands due from James B. Craighead, the purchaser of the real estate, devised for the benefit of the daughters. It had been sold on 8th of January, 1859, on a credit of twelve months, for $10,400, of which $6,240 had been paid in good money by the purchaser, Craighead, and included in the partial account settled in May, 1860. But there was still a balance due of $4,160, besides interest. Craighead died, according to Horn's testimony, in June, 1859. His wife took out letters of administration on his estate. By the laws of Alabama, an administrator cannot be sued until after six months from the grant of letters of admistration; and judgment cannot be rendered until the expiration of eighteen months therefrom. The whole sum became due in January, 1860, and suit could have been immediately brought and judgment could have been obtained by the month of January, 1861. But the executor did not bring suit, and not collect the balance until October, 1862, when he was obliged to take Confederate notes worth at the time only about thirty-six cents to the dollar. Of these he received the sum of $5,075,20 in satisfaction of the debt. He kept this money and other money of the estate received in Confederate funds in his hands until March, 1864, when under laws then existing, he deposited $7,900 thereof as executor, in the Confederate States' Depository Office at Selma, Ala., and received a certificate entitling him to Confederate States, four per cent. bonds to that amount. The receiving of money by Horn as executor, in Confederate notes, and the investment of said notes in Confederate bonds, *were in strict accordance with laws passed by the Legislature of Alabama in November*, 1861, *and November* 1863, *whilst that State was engaged in civil war with the United States.*

In May, 1864, the final accounts of the executor were passed in the Probate Court, after due publication of notice, and he resigned his executorship in accordance with the laws of Alabama. The final decree recites the fact, that it appeared that the executor had invested the moneys of the estate in his hands at four per cent. Confederate bonds, and approved and confirmed the same, and directed the several shares of the widow and children of the deceased to be paid to them in said bonds. The amount due to the complainants, according to the decree, was, to Wm. Lockhart and Sarah A., his wife, $1,295.78, and to Charles J. Lockhart and Narcissa, his wife, $1,209.19.

The opinion thus concludes:

"I see nothing in the case to question the accuracy of the amounts found due to the complainants by the decree of May, 1864. The question is whether the defendant can exonerate himself by paying those amounts in Confederate bonds, in accordance with the decree.

As a general rule, in my judgement, all transactions, judgments, and decrees which took place in conformity with existing laws in the Confederate States between the citizens thereof during the late war, except such as were directly in aid of the rebellion, ought to stand good. The exception, namely, of such transactions as were directly in aid of the rebellion, is a political necessity required by the dignity of the United States Government and by every principle of fidelity to the Constitution and laws of our common country. By this rule the present case must be judged. And by this rule the deposit of the $7,900, money of the estate, in the Depository of the Confederate States at Selma, cannotbe sustained;—it was a direct contribution to the resources of the Confederate government.

The defendant then must be considered chargeable with the Confederate Treasury notes which he so deposited. And the next question is whether he can discharge himself by paying the legacies in such notes. It will be remembered that the greater part of that balance, in his hands, had become due in January, 1860, and he does not show us when the remainder became due. It is fair to suppose, therefore, that it all became due as early as that date. He could not have obtained judgment against Craighead's estate until January, 1861, it is true. *But it does not appear that he could not have collected the money by the exercise of proper diligence without suit.* And if he had brought suit and perfected his judgment by January, 1861, he would still have been in time to have collected the amount due in good money. The complainants were urging him to proceed as early as August, 1860. He was cited to settle up his account, and the citation was repeated in January, 1861.

I cannot but regard the executor as liable for the balance due in lawful money with interest to the present time. *He has not shown sufficient excuse for not collecting the funds of the estate before the war commenced. Had he shown such an excuse, I should have felt bound to charge him only with the value of the funds at the time when he received them, with a reasonable allowance of time for making a settlement.*

It may be urged that the decree of the Probate Court made in May, 1864, is conclusive on the question of the executor's diligence in the collection of the money due the estate. But a careful examination of that decree shows that this question was not passed upon by the court. By the laws then existing an executor was exonerated by investing his funds in Confederate bonds. Horn having thus invested the funds in his hands the court did not deem it necessary to look farther, but decreed him to be within the protection of the statutes.

That decree, as before shown, cannot avail him in this case. *Had the court decided the question of diligence I should have deemed its decision on that point conclusive.*

A decree will be made for the amount found to be due the complainants by the settlement of May, 1864, with lawful interest thereon to the present time."

Jurisdiction.

As the Constitution limits the jurisdiction to controversies between citizens of different States, no form of pleading or express consent could authorize the court to decree in the case as presented by the bill. On its face it shows there is no jurisdiction, and it is well settled that this defect may be taken advantage of without demurrer on motion at any stage of the proceedings.

Coal Company v. Blatchford, 11 Wall., 178.

The question of jurisdiction was raised before the case was submitted for a hearing on the merits. The judge then declined to determine it. The case was then submitted for a hearing on the bill, answers, and proofs, and in the final decree is the first notice of the dismissal of the bill as to McPhail and wife. Whether the court had jurisdiction of the cause must be determined by the state of the cause when it is submitted for decision, and not by matter ex post facto.

The case relied on by the other side (Conolly v. Taylor, 2 Pet., 564,) does not justify the action in this case. The Chief Justice in replying to the case which had been elaborately argued by very eminent counsel, to wit, that the jurisdiction depends on the state of the parties at the commencement of the suit, says, that the defect may "be corrected at any time *before* the hearing."

Again, he says, "Had the cause *come on for a hearing* in this state of parties a decree could not have been made for want of jurisdiction. The name of the citizen, plaintiff, was, however, struck out of the bill *before the cause was brought before the court.*"

The bill is filed by Horn to set aside a will, to have distribution made of the land, and an account against the executor. In such a bill McPhail and wife were necessary parties. They could have been joined as co-complainants as they were with them citizens of Texas. That there was no difficulty in procuring their assent to this, is to be seen in their voluntarily appearing as defendants to this suit, and by their answer confessing all the statements of the bill to be true.

Barney v. Baltimore, 6 Wall., 283.

In dismissing the bill to cure the defect of jurisdiction it was made defective for want of necessary parties.

On the Merits.

The court held that "the receiving of the money by Horn, as executor, in Confederate notes, and the investment of said notes in Confederate bonds were in strict accordance with laws passed by the legislature of Alabama in November, 1861, and November, 1863," (p. 136.)

It also held, "that all transactions, judgments, and decrees, in conformity with existing laws between citizens of the Confederate States during the war, except such as *were directly in aid of the rebellion*, ought to stand good."

But the deposit by Horn of the $7,900 in the depository of the C. S. A. was adjudged to be within the exception as a direct contribution of the resources of that government, (pp. 1, 38–9.)

It is not claimed that Horn incurred liability for receiving the sums due to the estate in Confederate money—for he did this in strict conformity with existing laws. His liability is rested upon his depositing this money for the purpose of converting them into interest-bearing bonds.

Was this act a violation of the trust imposed on him by the law?

Horn testifies, that "he bonded them because of the law passed by the Confederate Congress, compelling Treasury notes to be bonded by such a time, or they would be worthless, and that he reported the same to the Probate Court as required by law, and filed the certificate or bond in said court," (p. 118.)

The law thus referred to, is found at p. 77. It requires that such notes as were held by Horn, should be presented for funding before 1 April, 1864. A failure to do this, incurred the penalty of a tax in addition to that of 33⅓ imposed by the 4th section, of ten per cent. a month until presented. Besides this the money was to be no longer receivable for taxes, the chief value the money then possessed.

Horn's conduct is to be judged by the circumstancse which existed when he was called on to act. He would have been faithless to his trust had he permitted these notes to perish in his hands while there was an opportunity of investing them in a security which might be of value.

It is difficult to see how this act could be said to be in aid of the rebellion, when no such motive induced it, but on the contrary it is shown to have been done under compulsion of law, and to save the estate for the cestui qui trust.

It is equally difficult to see how, if Horn can free him-

self from liability in receiving confederate money, because the law of the State directed him to do so, he may not also claim the protection of law in converting that money into bonds.

The evidence shows that there was no other currency in the country, and the good faith of Horn, is established by the proof that he took this currency in payment of of his own debts. His reluctance to take this currency for the sum now in dispute is shown by the deposition of Mr. Clarke, an eminent lawyer of the State. He was the attorney of Mrs. Craighead and paid the money to Horn. He says Horn "was averse to taking Confederate Treasury notes at the time I paid him. He tried to avoid receiving them by keeping out of the way, and I had to hunt him up to make him take them. Public opinion was strong against any person who refused to take them at that time, and my recollection is, that Horn was threatened before he took the money" (p. 109.)

Negligence.

The court further held that Horn had not "shown sufficient excuse for not collecting the funds of the estate before the war commenced." Again, "he could not have obtained judgment against Craighead's estate, until January, 1861, it is true. *But it does not appear* that he could not have collected the money by the exercise of proper diligence without suit; and if he had brought suit and perfected his judgment by January, 1861, he would still have been in time to have collected the amount in good money." (p. 139.)

Alabama seceded in January, and war commenced, April, 1861, and we submit that so close a calculation has never yet been made the basis for charging negligence against a trustee.

But the court has fallen into error in reference to dates. The sale was made to Craighead, January 8th, 1859, at twelve months, the purchase-money was due January 8th, 1860; Craighead died shortly before this latter date, and his wife took out administration soon after this date, the exact time not stated. By the laws of the State no judgment could be recovered against her for eighteen months after administration. And if the suit had been brought on the 8th January, 1860, judgment could not have been rendered until the 8th July, 1861, when the war was flagrant. Besides, this judgment could only be enforced by execution and this would have taken at least six months longer.

The liability of Horn is also made to rest on the ground that it does not appear he could not have collected the money without suit; we reverse this and say, it does not appear he *could have so collected it.* Which of these constitute the rule for judicial action? If the complainants seek to establish the negligence of the defendant, he must produce the evidence upon which he rests the allegations.

The eighteen months allowed by law to an administrator, is for the purpose of ascertaining the amount of the estates' indebtedness, and the value of the assets, so as to fix the pro rata of payment if it should prove insolvent; and it is certainly a very violent presumption that the administratrix would have immediately after the grant of letters in 1860, paid so large an amount in advance of the time allowed by law.

But a still more conclusive answer on this head is, that the *bill makes no charge of negligence in the collection of this debt.* The matter was never in issue, and not a particle of evidence was adduced to establish it. If such evidence had been offered, it must have been rejected on the ground, there was no allegation to sustain it.

Res judicata.

"It may be urged (say the court below) that the decree of the Probate Court, of May, 1864, is conclusive of the question of diligence in the collection of the money due the estate. But a careful examination of the decree shows that this question was not passed upon by the court. By the laws then existing, an executor was exonerated by investing his funds in Confederate bonds. Horn having thus invested the funds in his hands, *the court did not deem it necessary to look further*, but decreed him to be within the protection of the statutes. That decree, as before shown, cannot avail him in this case. Had the court decided the question of diligence, *I should have deemed its decision on that point conclusive*," p. 139.

The decree on partial settlement, at which all these parties were represented, is at pp. 61–2, and the final decree at p. 71.

The subject matter of this decree is the settlement of an estate, and the parties are on the one side all the heirs, and on the other the executor.

The heirs seek a final settlement. The executor is bound to show all his doings in order to obtain his discharge. If, by his negligence, he has lost a debt due to the estate, this is a ground for charging him with the amount, and over this the court has the same jurisdiction as it has over any item of his account. The proceeding before the court is not ex parte; it is a contestation or suit in which both sides are represented, as fully as if it were a bill in chancery, and differing only in this—that the contesting heirs are not confined to specific allegations as in a bill—but are at liberty to raise every question going to show an improper administration.

The decrees of the Orphan's' Court, though not obtained by the prosecution of a suit in the ordinary form of procedure, are assimilated to a judgment, and conclude all questions involved in it.

11 Serg't & Rawle, 436.

The whole current of authorities recognizes the principle that where a cause has been instituted in a proper *forum* where all matters of defence were open to the parties, the judgment is conclusive. *De fide et officio judicis non recipitur quæstio.*

This question was elaborately considered by this court in an opinion of Mr. Justice Clifford, and is thus stated, "Where every objection argued in the second suit, was open to the party within the legitimate scope of the pleadings in the first suit, and might have been presented in that trial, the matter must be considered as having passed *in rem judicatam.*"

Reference to Taylor's evidence, § 1,513, shows the rule thus—"Except in special cases the plea of *res judicata* applies not only to points upon which the court was actually required to form an opinion and pronounce judgment, *but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at that time.*"

Aurora City v. West, 7 Wall., 102.

The judgments rendered by courts of the Confederate States, as between citizens of those States, have been recognized by this court as valid, and in all respects to be considered as obligatory as if rendered by the same courts prior to or subsequent to the war. Any other doctrine would make "confusion worse confounded;" and this was fully admitted by the court below in the opinion cited.

The courts of the State organized since the war, influenced by a reactionary spirit, have given reluctantly their support to these judgments. More rational counsel has lately made its way and the latest exposition is to be found in the case of Griffin et al. v. Ryland et al., decided by the Supreme Court of the State at the June Term, 1871, and, as it is not reported, I copy it for the convenience of the Court: "Appeal from the Probate Court of Mobile County."

PECK, C. J. In deciding this case, we shall treat the judgments and decrees rendered by the courts of the Rebel State Governments, as standing on the footing and having the legal effect of foreign judgments and decrees. Foreign judgments, when carried into effect, are a protection to the parties to such judgments.

The judgment of the Probate Court, in this case, is not only a final judgment, but was carried into effect immediately after it was rendered. It must be held, therefore, to protect the appellees until it is impeached for fraud, or avoided by some legal proceeding for that purpose. It cannot be declared void by the Probate Court at the instance of the appellant upon the ground that it was rendered by a Probate Court of the Rebel government.

If the petition had been filed in time, and formed under Ord. No. 48 of the convention of 1867, entitled an ordinance to allow widows, orphans, and others, to review the validity of sales and settlements of estates made by guardians, trustees, &c., adopted 19 November, 1867, (acts of 1868, p. 187,) the said decree of final settlement, we think, might have been examined and reviewed in the Probate Court.

The petition, however, does not seem to be framed with reference to that ordinance, and, if it were, the or-

dinance had expired by its own limitation some months before the petition was filed.

This ordinance of itself shows, that the convention did not consider the judgments, sales, and settlements, referred to, void; but on the contrary, provided how they might be reëxamined and reviewed."

It is thus perceived that the State was not unmindful of the vital importance of securing the peace and harmony of its citizens, by affirming the validity of judgments rendered during the long period of the war. At the same time it recognized the difficulties and obstructions which had been created by the war, and which prevented litigants from giving that attention and care to judicial proceedings which are strictly demanded in a condition of peace.

At the first convention of the people after the war had closed, it was provided that in all judgments and decrees rendered since January, 1861, a new trial should be granted on the affidavit of the applicant, that he was unavoidably absent, and had a meritorious defense, (see p. 84.) A similar remedy is to be found in the ordinance of the convention of 1867, cited by Judge Peck.

With these citations we may assert with confidence, that the final decree of settlement was conclusive on the court below. The decree is brought forward by the complainants themselves as part of their case—it is exhibited in their bill, (p. 9.) Their objections to it are set forth at p. 3. They deny that there was any law, "valid or pretended," which authorized the executor to receive Confederate money; that they had no notice of the settlement; that the State of the country disabled them from going to Marengo where the court was held,

therefore, they have the same right to call for a settlement, as if said final decree had not been made.

As a question of fact, the record from the Probate Court, shows nothing as to the objections made, but as a question of law it is of no consequence, for all objections that should have been made are concluded by the judgment.

As to notice, it is shown by the record of the decree that the non-residents were advertised for according to law. Further than this, Mr. Modawell, the attorney who represented the executor, testifies that Clarke and Terrill and Robert D. Hart, represented the legatees on the partial settlement, and Robert D. Hart on the final settlement, (p. 102.)

In his cross-examination, he qualifies this by saying, "I do not now remember that Hart was present at the final settlement, but he did appear on a former day, examined the accounts and vouchers, *and said final settlement was continued once at his request*, p. 104.)

Horn testifies, that Hart, claimed to represent all the heirs but himself—"that at the January Term, 1864, he had the settlement continued to third Monday in March. At the March Term the case was continued, for the absence of Hart; at the April Term it was again continued.(p. 123.)

In this connection it is to be remembered that two of the legatees resided in the State. But whether the non-residents had actual notice or not is immaterial; they had legal notice by advertisement, and that as between citizens of different States within the Confederate lines is sufficient to sustain the judgment. The doctrine laid down in Dean v. Nelson, has no application to such a case.

There was then error in the decree in holding the execuor liable for negligence in the collection of the Craighead debt.

First. Because no such allegation is made in the Bill and no evidence offered to show negligence.

Second. Because if the Executor had made himself chargeable for a loss occasioned by his negligence, that should have been shown on the settlement.

Third. If the question of negligence was an open one, it is shown that the decree proceeds on a mistake of dates, The Judge says, the judgment against Craighead could have been rendered in January 1861, when it is shown that in allowing eighteen months to the administrator, it could not have been recovered until July 1861, six months after Alabama had seceded.

P. PHILLIPS,
Sol'r for Appellant.

Supreme Court of the United States.

No. 143.

JOHN A. C. HORN, APPELLANT,

vs.

WILLIAM LOCKHART, SARAH A. LOCKHART, AND NARCISSA LOCKHART.

The appellees respectfully suggest to the Court that no transcript, duly certified, has been filed in this cause, and that the appeal is no longer of any validity.

That a transcript from the circuit Court of the United States for the district of Alabama, was filed with the clerk of the Supreme Court on the 10th of November, 1871, which contains a certificate of the clerk of said circuit court as follows, (folio 379, of printed transcript :)

"In the circuit court of the United States for the fifth judicial circuit, southern district of Alabama—In equity."

I, Nathaniel W. Trimble, clerk of the court aforesaid, do hereby certify that the foregoing pages, numbered from 1 to 378, inclusive, contain a true and correct transcript of all the record and proceedings in the case of William Lockhart and Sarah, his wife, and Narcissa Lockhart *vs.* John A. C. Horn, as executor, &c., *et als.*, except the testimony in said cause, on that portion of the complainants' bill which was dismissed on the final decree.

In testimony whereof, I hereunto subscribe my name, and

cause the seal of said circuit court to be affixed, this 19th day of October, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] N. W. TRIMBLE,
Clerk U. S. Circuit Court Seventh Dist. Alabama.

And said record contains an assignment of error, signed by John A. C. Horn, as solicitor *pro se.*

The appellees respectfully insist that the appellant, not having filed a transcript duly certified, as required by the rule of the Supreme Court, his appeal has become *functus officio*, and ought to be abated, and the cause stricken from the docket.

JOHN T. MORGAN,
Solicitor for Appellees.

In support of the foregoing objection, we cite the case of *Blitz* vs. *Brown*, 7 *Wall*, 693.

JOHN A. C. HORN, et. als.

VS.

WILLIAM LOCKHART, et. als.

No. 143.

APPEAL FROM

CIRCUIT COURT FOR ALABAMA.

Argument of John T. Morgan

FOR DEFENDANTS.

SELMA, ALA.:
J. P. ARMSTRONG & CO., PRINTERS, STATIONERS AND BINDERS.
1873.

IN SUPREME COURT OF THE UNITED STATES.

JOHN A. C. HORN, et als.

vs.

WILLIAM LOCKHART, et als.

On the trial of this case in the Circuit Court of the United States at Mobile, Alabama, Justice Bradley delivered the following opinion:

"The complainants, Sarah A. and Narcissa Lockhart, are daughters of John Horn, deceased. The defendants, are his only son, John A. C. Horn, and his three other daughters, Frances L. Bryan, Elizabeth P. Nabors and Mary McPhail and their husbands, and the Administrator of Rebecca Horn, widow of the deceased.

The bill is filed for two objects:

FIRST—To contest the validity of the will of John Horn, deceased, admitted to Probate in Marengo county, 13th of September, 1858, at the instance of John A. C. Horn, executor and principal devisee.

SECONDLY—To recover from said John Horn the distributive share of said complainants in the estate of their father; or in case the will be not broken, to recover from him the balance due them as legatees under the will.

The complainants are residents of Texas; the defendants are all residents of Alabama, except Mary McPhail and her husband, William McPhail, who reside in Texas.

The relief sought, is sought entirely against John A. C. Horn; but the other defendants are made parties, because they have an interest in the estate.

William McPhail and wife, though not served with process, have voluntarily appeared and put in an answer admitting the truth of the statements made by the bill, and praying a decree for Mary McPhail's share of the estate.

The first aspect of the bill is founded on a statute of Alabama which, after prescribing the mode in which a will may be propounded and contested, enacts that any person interested in a will, who has not contested it as provided by the act, may at any time within five years after the admission of the will to probate, contest its validity by bill in Chancery.

The Complainants allege that they did not contest the will when it was admitted to probate; and as to the limit, of five years, for filing the bill, they plead the civil war, and the laws passed in suspension of the statutes of limitation.

The leading facts as they appear by the pleadings and evidence, are as follows:

John Horn of Marengo county, Alabama, died in March, 1858, leaving a large estate in lands, negroes and personal property; and leaving a widow and six children.

Some time about May 1857, the deceased, John Horn, made a will, which was in existence up to a short time prior to his death. His son John A. C. Horn, alleges that it was fraudulently purloined and destroyed, either during the decedent's illness or after his death; the daughters allege that their father voluntarily cancelled and destroyed the will before his death.

Soon after the death of John Horn, his son procured himself appointed administrator, *ad colligendum*, and by petition in the Probate Court of Marengo county, set up a paper which he alleged to be a true copy of John Horn's will, with allegations as to its spoiliation, etc., and praying that it might be established as his will.

The widow and all the children residing in Alabama, were duly cited to appear and show cause why the alleged will should not be admitted to probate. As the Complainants and McPhail and wife resided in Texas, a notice of the time and place set for the hearing was duly published in a newspaper, as authorized and required by the laws of Alabama.

By these laws any party in interest who wishes to contest a will offered for *probate*, must file in the Court, allegations in writing stating the ground of contestation.

(*Rev. Code, Sec.* 1,953.)

It appears from the records of the proceedings, that two of the daughters, Frances L. Bryan and Elizabeth P. Dumas, afterwards Nabors, in their proper persons,

and Mary McPhail, with her husband, William McPhail, by their attorney, appeared and contested the probate. It does not appear that the others made any legal contestation. The cause was tried by a jury according to the laws of Alabama; and the will was established by their verdict and the jndgment of the Court on the 13th September, 1858, and 22d November following, letters testamentary were issued to John A. C. Horn, as the executor.

By the will thus established, the homestead plantation of 720 acres, was given to John A. C. Horn, after his mother's decease, and a smaller tract 208 acres was directed to be sold and the proceeds divided equally amongst the daughters. The residue of the estate, after charging the daughters with certain advances made to them by testator in his life time, was to be equally divided between all the children. The widow repudiated the will and claimed her dower.

On the 29th of December, 1858, by order of the Court, a division of the slaves of testator, 78 in number, was made between his widow ahd children, by Commissioners appointed for the purpose and upon a valuation then made, the daughters being charged with the respective advances named in the will as made to them in their father's life time. They severally, with their husbands, receipted for the slaves which were assigned to them in this division. William A. Lockhart gave a receipt for his wife as follows:

"Received of John A. C. Horn, Executor of John Horn, deceased, the following slaves to-wit: (giving their names and values) which is in full of my distributive share of the negro property of John Horn, deceased, in the division of the same, the Commissioners having charged me with $4,400 the amount of the ad-

vance mentioned in the will of the said John Horn, deceased."

(Signed) W. A. LOCKHART,
Agent for S. A. Lockhart.

Attest: E. R. SHOWALTER.

A similar receipt was given by Narcissa Lockhart and her husband, who was then living. At the same time the Executor made payments of money to the daughters, which were duly receipted for. The receipt given by William Lockhart was as follows: "Received of John A. C. Horn, Executor of John Horn, deceased, two thousand and eighty dollars in part payment of my claim in the estate of John Horn, deceased, this January 10th, 1859.

(Signed) W. A. LOCKHART,
Trustee of S. A. Lockhart."

A similar receipt of the same date and amount was given by Narcissa Lockhart and her husband.

In October Term, 1859, of the same Probate Court, John A. C. Horn, the Executor, filed a partial account of his administration, including his sales of property and the said division of slaves. Due notice of exhibiting the account was published as required by the laws of Alabama, and William Lockhart and his wife, Charles J. C. Lockhart and Narcissa, his wife; William McPhail and his wife, and Frances L. Bryan, contested the account as to the various items thereof. A decree was finally made on the 21st of May, 1860, by which it was declared that the Executor had in his hands for distribution $10,783 50, proceeds of the land to be sold and divided among the daughters, and $5,159,11-100, proceeds of personal property to be divided among the widow and children in accordance with the will, specifying the amount payable to each. By this

account it appeared that Charles Lockhart and Narcissa, his wife, were indebted to the Executor a small sum, he having already made them a payment as before stated, and there was due from him to William Lockhart and Sarah, his wife, $608 9-100 over and above the payments made to them.

This sum was paid, and William Lockhart gave a receipt for the amount, as follows:

"Recieved of John A. C. Horn, Executor of the last will and testament of John Horn, deceased, six hundred and eight dollars and nine cents, in full of the amount decreed, by the Probate Court of Marengo county, in May, 1860, in favor of my wife Sarah A. Lockhart and myself, in partial settlement made by said John A. C. Horn under said will, May 26th, 1860.

(Signed) W. A. LOCKHART,
(Witness) G. W. COTTON.

In August, 1860, and January, 1861, citations were issued at the suit of the daughters, or some of them, to call the Executor to a final account. There was still a balance in his hands due from James B. Craighead, the purchaser of the real estate, devised for the benefit of the daughters. It had been sold on 8th of January, 1859, on a credit of twelve months, for $10,400, of which $6,240 had been paid in good money by the purchaser, Craighead, and included in the partial account settled in May, 1860. But there was still a balance due of $4,160, besides interest. Craighead died, according to Horn's testimony, in June, 1859. His wife took out letters of administration on his estate. By the laws of Alabama an Administrator cannot be sued until after six months from the grant of letters of administration, and judgment cannot be rendered until the expiration of eighteen months therefrom. The whole sum became due in January, 1860, and suit could have been imme-

diately brought and judgement could have been obtained by the month of January, 1861. But the Executor did not bring suit, and did not collect the balance until October, 1862, when he was obliged to take Confederate notes worth at that time only about thirty-six cents to the dollar. Of these he received the sum of $5,075 20 in satisfaction of the debt. He kept this money and other money of the estate received in Confederate funds in his hand until March, 1864, when under laws then existing, He deposited $7,900 thereof as executor in the Confederate States Depository Office at Selma, Alabama, and received a certificate entitling him to Confederate States four per cent. bonds to that amount. The receiving of money by Horn as Executor, in Confederate notes, and the investment of said notes in Confederate bonds, were in strict accordance with laws passed by the Legislature of Alabama in November, 1861 and November, 1863, whilst that State was engaged in civil war with the United States.

In May, 1864, the final accounts of the executor were passed in the Probate Court after due publication of notice, and he resigned his executorship in accordance with the laws of Alabama. The final decree recites the fact, that it appeared that the executor had invested the moneys of the estate in his hands in four per cent. Confederate bonds and approved and confirmed the same, and directed the several shares of the widow and children of the deceased to be paid to them in said bonds. The amount due to the complainants, according to the decree, was, to William Lockhart and Sarah A., his wife, $1,295 78, and to Charles J. Lockhart and Narcissa, his wife, $1,209 19.

Upon this case the following questions arise:

FIRST.—The first question is, as to the jurisdiction of the Court. Two of the defendants, McPhail and

wife, are of the same State with the complainants. Is that fact fatal to the jurisdiction, these defendants having voluntarily appeared and answered and not having objected to the jurisdiction, and no objection of that kind being taken until the present time, the fact of their residence in Texas, however, appearing in the bill itself? Were this an original question, I should say that the fact of a common State citizenship existing between the complainants and a part only of the defendants, provided the other defendants were citizens of the proper State, would not oust the Court of jurisdiction. It certainly would not under the Constitution. The case would still be a controversy between citizens of different States. But the strict construction put by the Courts upon the judiciary act is decisive against the jurisdiction; and I am bound by it. Nevertheless, the case is such that the complainant may dismiss his bill as to the obnoxious defendants and hold it as to the others. I will permit him to do so. This should be allowed in all cases where the objection is not made *in limine*.

In this case I do not regard McPhail and wife as absolutely essential parties. The suit is really a suit against John A. C. Horn. Whether the plaintiffs are successful or unsuccessful will make no difference as to the rights of McPhail and wife. They cannot contest the will, for they have once done so. If the complainants succeed in breaking the will they may perhaps ultimately participate in the advantages of it if such is the law of Alabama. But it will be their good fortune rather than their right. Any rights which they may have will be unprejudiced by the result of the suit. I will therefore allow the complainants to dismiss the bill as to them.

SECOND.—The next question relates to the limita-

tion of five years. The will was admitted to probate on the 13th of September, 1858: this suit was instituted the 15th of November, 1867—a distance of 9 years, 2 months and 2 days; too late by 4 years, 5 months and 2 days, unless the statute was suspended by some law or other cause. The complainant relies on several grounds for a suspension of the limitation.

First, The fact that civil war was raging in Alabama and other States from January 11, 1861, when the Act of Secession was adopted, to the close of hostilities and the restoration of order in the summer or fall of 1865. I do not agree that this was a sufficient ground for the suspension of legal remedies and acts of limitation as between the citizens of the Confederate States any more than it would be as between citizens of States which adhered to the Federal Government. It is a fact that the Courts of Alabama were open to all the citizens of the Confederate States, and there was no law to prohibit them from resorting thereto. Were the statutes of limitation of the several States, or of any of them suspended during the war of 1812, because the British forces occupied part of our territory, or because the war was raging in portions of the country? Unless a country is actually occupied by hostile forces, and its laws and courts are suppressed, it would be giving to the courts too large a discretion to allow them to decide when and when not the statutes of limitation are in operation as between their own citizens only.

This being a question as to the general effect of a war on remedies and statutes of limitation, I do not feel that I am bound by the decisions of the Supreme Court of this State.

The next ground relied on by the complainants for a suspension of the statutes is the ordinance of 21st September, 1865, passed by the Constitutional Conven-

tion assembled at Montgomery under the proclamation of President Johnson, by which it was declared that in computing the time necessary to create the bar of the statutes of limitation and non-claim, the time elapsing between the 11th of January, 1861, and the passage of that ordinance should not be estimated. Suppose the acts of this convention to have been valid as laws until abrogated and repealed (for which many reasons may be urged), still the whole period of five years had already run when this ordinance was passed; and the effect of it, as applied to this case, was to revive a claim already extinct. This would be to interfere with rights already vested, and would be an unconstitutional application of the law.

The remaining ground for supposing that the limitation of the statutes was suspended is the Act of Congress of June 11th, 1864, (13 Stat. 123,) by which it is enacted in substance, that whenever during the existence of the rebellion resistance to the laws or interruption of the ordinary course of judicial proceedings, prevented the prosecution of an action the statute of limitation should not run. But this statute has in no case been construed to apply to a case arising between citizens of the same section of the country; and if it may even be so applied, I think it cannot be in this case. For it is not true that the proceedings of the courts here were so interrupted as to prevent the prosecution of suits therein by citizens of any of the Confederate States except for brief periods of time. I am not referred to any other laws affecting this question.

In my judgment, therefore, the statutory limitation for bringing this suit as a means of contesting the validity of the will of John Horn had expired when the bill was filed, and as to that portion of the relief sought the bill must be dismissed.

I am further of opinion that the complainants by their own acts were estopped from filing a bill for that purpose. After the will was admitted to probate they twice received, without objection or protest, dividends of the property of John Horn, founded on the directions of his will, and gave to John A. C. Horn, as executor thereof, acquittances therefor. In this they recognized, the will and recognized John A. C. Horn as the executor thereof, and they cannot now come into a court of equity without any allegation of frand or concealment, or newly discovered evidence and claim to have the will set aside.

THIRD.—But the other ground of relief still remains, namely, the claim of the complainants against the executor for the balance of their legacies.

I see nothing in the case to question the accuracy of the amounts found due to the complainants by the decree of May, 1864. The question is whether the defendant can exonerate himself by paying those amounts in Confederate bonds, in accordance with the decree.

As a general rule, in my judgment, all transactions, judgments and decrees which took place in conformity with existing laws in the Confederate States between the citizens thereof during the late war except such as were directly in aid of the rebellion ought to stand good. The exception, namely, of such transactions as were directly in aid of the rebellion, is a political necessity required by the dignity of the United States Government and by every principle of fidelity to the Constitution and laws of our common country. By this rule the present case must be judged, and by this rule the deposit of the $7,900, money of the estate in the Depository of the Confederate States at Selma, cannot be sustained, it was a direct contribution to the resources of the Confederate Government.

The defendant then must be considered chargeable with the Confederate Treasury Notes which he so deposited. And the next question is whether he can discharge himself by paying the legacies in such notes. It will be remembered that the greater part of that balance in his hands had become due in January, 1860, and he does not show us when the remainder became due. It is fair to suppose, therefore, that it all became due as early as that date. He could not have obtained judgment against Craighead's estate until January, 1861, it is true. But it does not appear that he could not have collected the money by the exercise of proper diligence without suit. And if he had brought suit and perfected his judgment by January, 1861, he would still have been in time to have collected the amount due in good money. The complainants were urging him to proceed as early as August, 1860. He was cited to settle up his account, and the citation was repeated in January, 1861.

I cannot but regard the executor as liable for the balance due in lawful money with interest to the present time. He has not shown sufficient excuse for not collecting the funds of the estate before the war commenced. Had he shown such an excuse I should have felt bound to charge him only with the value of the funds at the time when he received them, with a reasonable allowance of time for making a settlement.

It may be urged that the decree of the Probate Court made in May, 1864, is conclusive on the question of the executor's diligence in the collection of the money due the estate. But a careful examination of that decree shows that the question was not passed upon by the Court. By the laws then existing an executor was exonerated by investing his funds in Confederate bonds. Horn having thus invested the funds in his hands, the Court did not deem it necessary to look farther, but de-

creed him to be within the protection of the statutes. That decree, as before shown, cannot avail him in this case. Had the court decided the question of diligence I should have deemed its decision on that point conclusive.

A decree will be made for the amount found to be due the complainants by the settlement in May, 1864, with lawful interest thereon to the present time.

We offer the following additional suggestions and authorities:

This suit is between citizens of Texas and a citizen of Alabama. The real test of jurisdiction as to parties established by the 11th section of the Judiciary Act is whether the plaintiffs, or any of them, are citizens of the State where the suit is brought. If the plaintiffs are not citizens of that State but are citizens of another State, the jurisdiction as to the parties exists where the suit is brought against one who is a citizen of the State in which the suit is brought. We submit that a jurisdiction thus attaching is not ousted by the fact that a party is sued who is not a citizen of the State in which the suit is brought, but is a citizen of the same State with the plaintiff. Congress in conferring the administration of the judicial power of the United States in cases in equity upon the Circuit Courts gave them plenary equity jurisdiction.

Payne vs. Hook, 7 *Wallace* 425..

There are many cases in which the exercise of this jnrisdiction would be so cramped as to become inefficient if the court could not render decrees against citizens of States other than those in which the suit is brought. Rule 22 of the practice in equity was adopted to remedy as far as practicable this defect. Persons who are necessary parties, or may properly be

made parties, are subject to subpœna "if they should come within the jurisdiction."

The plenary jurisdiction conferred on the Circuit Courts in equity cases, we think, is not defeated by the fact that a party defendant who may so "come within the jurisdiction" happens to reside in the same State with the complainant. The question in such case would be whether the complainant could have, as against such defendant, full, adequate and complete relief in his suit in the courts of the State where they are both citizens. If he could not have such relief he is not compelled to sue in such State courts. The letter of the statute denies to the Circuit Courts jurisdiction of the suits "when it is between citizens of the State in which the suit is brought, but its spirit, gathered from the entire context is, that in equity cases, the jurisdiction is not ousted by the citizenship of the complainant and one of the defendants in a State in which the suit is not brought.

Noonan vs. Lee, 2 *Black* 499.

Fitch vs. Creighton, 24 *How.* 159.

Neves vs. Scott, 13 *How.* 268.

Robinson vs. *Campbell*, 3 *Wheat* 212.

Clark vs. Smith. 13 *Pet.* 195.

In this case the suit is not between the complainants and McPhail and wife. It is for the benefit of the latter, and no decree is asked against them. They are proper but not necessary parties. If this bill had been filed by the complainants against McPhail and wife in Texas no relief could have been obtained upon it.

West vs. Randall, 2 *Mason* 181.

In the case of the *Coal Company vs. Blatchford*, 11 *Wall.* 172, one of the complainants and the defendants were citizens of the State in which the suit was brought.

The following cases are more nearly in point and declare principles which seem to justify the uniting McPhail and wife as defendants to the suit.

Browne vs. Strode, 5 *Cranch* 303.

McNutt vs. Bland, 2 *How.* 10.

Wormley vs. Wormley, 8 *Wheat.* 421.

Irvine vs. Lowry, 14 *Pet.* 293.

If the bill on its face showed a want of jurisdiction as to some of the defendants, the amendment allowed by dismissing the bill as to them was proper, and relieved the case of the question.

Conolly vs. Taylor, 2 *Peters* 556.

Dwight vs. Humphreys, 3 *McLean* 164.

The Act of February 28, 1839, 5 Stat., at L. 321, provides for a decree on the voluntary appearance of a defendant and makes it "lawful for the Court to entertain jurisdiction" on such voluntary appearance. This statute contains no exception as to defendants who are citizens of the same State with the complainant.

The Supreme Court of Alabama, in harmony with the doctrines stated in *United States vs. Keehler*, 9 *Wallace* 83, has repeatedly held that the judgments of the Courts of States engaged in the rebellion are to be regarded as if rendered by foreign tribunals, and that the statutes enacted by States so in rebellion are void.

Shaw vs. Lindsay, 46 *Ala.* 290.

Mosley vs. Tuthill, 45 *Ala.* 621.

Bibb & Falkner vs. Avery, 45 *Ala.* 691.

Thompson vs. Perryman, 45 *Ala.* 619.

In this case it is held that a payment of a decree in Confederate money is no satisfaction.

In *Houston vs. DeLoach*, 43 *Ala.* 364, the Act of the Legislature authorizing guardians and trustees to

invest trust funds in Confederate bonds, approved November 7, 1861, is declared unconstitutional.

In *Powell vs. Knighton*, 43 *Ala.* 626, it is held that an executor who had sold enough property to pay a legacy, and received payment in Confederate money in good faith, had no defence against a suit to recover the legacy.

Hall vs. Hall, 43 *Ala.* 488.

Chisholm vs. Coleman, 43 *Ala.* 204.

Pitts vs. Singleton, 44 *Ala.* 363.

Kitchell vs. Jackson, 44 *Ala.* 302.

Jno. T. Morgan
Atty for
Appellees

Supreme Court of United States.

JOHN A. C. HORN,
v.
LOCKHART, *et al.* } No.

Brief of P. PHILLIPS,

ON RE-ARGUMENT.

[The case having been ordered for re-argument, without any indication on the part of the Court as to the points to be discussed, necessitates, in some degree. a repetition of what was stated in the former brief.)

There are some matters, however, discussed in the first brief, which will not be touched in this, and the judges are, therefore, requested to take the first brief in conjunction with this.]

The appellant, as executor of his father, John Horn, had a decree of the Probate Court of Alabama, on a partial settlement of his accounts, on 21 May, 1860, in which decree it was directed that certain sums found to be due should be paid to the distributees. The decree recites the presence of all the claimants. In the account thus rendered, Horn, the executor, is charged with having received from Craighead, for land sold to him, $6,240. The amounts found due were all paid by the executor, and receipts for the same filed. See from p. 62 to 69.

Horn was cited by McPhail and wife, and others, "to make a final settlement at the September ensuing,—p. 70.

On 28 January, 1861, on motion of McPhail and wife, he was ordered to file his account at the ensuing April term.

At the February term the settlement was indefinitely continued.

On 20 January, 1864, he filed his account and vouchers, and the hearing was ordered for 3d Monday, March next, and publication was directed to be made for three weeks. The hearing was subsequently continued to 1st Monday of May.

On the 1st Monday of May, the final decree was made, by which it was found that he had a balance in his hands on the general account, of $2,318.86, which is directed to be distributed, and that he had a further balance of $4,933.14, derived from the sale of the real estate, which is also directed to be distributed. The decree further declares that the "executor has fully administered the estate and has discharged all the specific legacies, and has invested the money of said estate in four per cent. Confederate Bonds. It is, therefore, adjudged, ordered and decreed, thatthe said account and vouchers, as stated, be passed and allowed as a final settlement of said estate." Payments are then directed to be made to the several parties in Confederate Bonds, and the resignation as executor is ordered to be filed. P. 91.

In the accounts filed, Horn is charged for amount received from Craighead, note balance 25 Dec., 1861 $5,075.20.

On 15th November, 1867, Lockhart and wife, and Narcissa Lockhart, as citizens of Texas, filed their bill in the Circuit Court of the United States, for the southern district fo Alabama, against Horn as Executor, making the other children of John Horn, among whom

were McPhail and wife, also citizens of Texas—defendants.

In reference to the settlements before the Probate Court, the bill charges that there was "no law valid or pretended which authorized the court to render a decree payable in Confederate Bonds," p. 3.

It charges that Horn had received sound funds, the equivalent of specie, and that his investment in the Bonds was illegal, and was a conversion by him for which he is liable. The bill then prays the court "to take full jurisdiction of the settlement of said estate and proceed to distribute the same. The decrees on partial and final settlement are made exhibits to the bill.

The answer of Horn denies the truth of the allegation that he had received in all cases sound money. It states that the land of the estate was sold to Craighead on 8th January, 1859, on a twelve months credit for $10,400. That Craighead before his death paid in good money $6,240, which was duly accounted for in his partial settlement. That in October, 1862, he received from Craighead's administrator $5,075,20, the balance due in Confederate Treasury notes, this being the only currency then in circulation.

The answer then states that "in good faith, and as he believed for the best interest of the estate, and by advice of his attorneys, he deposited all the Confederate money belonging to the said estate with the Confederate depository, and received therefor Confederate Bonds. The act which compelled such deposit is referred to and exhibited.

It is not necessary to argue that the decree of the Probate Court, though made during the civil war, was not

for that reason void. The court had jurisdiction of the subject-matter and of the parties. In recognizing the legality of the investment in Confederate Bonds, and ordering distribution in them, it had the sanction of the laws of the State and of the Confederate States, under whose dominion it exercised its functions.

All the parties to the controversy were voluntarily under this dominion, and whatever was consummated under these laws cannot be readjudicated except by provisions of law enacted for that purpose.

Admitting, for the argument, that these laws could be held as invalid, the only consequence would be, not that the decree of final settlement was void, but that it was erroneous, and the time and manner for correcting the error must be looked for in the statutes of the State.

Wyman v. Campbell, 6 Port., 219.

Thompson v. Tolmie, 2 Pet., 162.

Beauregard v. City N. O., 18 How., 502.

That the present decree was final and concluded all the parties, until reversed, was decided by the Supreme Court of the State, in 1870, in a proceeding by Bryan one of the present parties who sought to open it.

Horn v. Bryan, 44 Ala., 88.

To ascertain particularly what these laws are, we give a history of legislation *during* the war.

Alabama adopted her secession ordinance, January, 1861.

By an act of the legislature, 9 November, 1861, (pamphlet acts, 1861, p. 53,) executors, &c., were authorized to "purchase Bonds of the Confederate States, for the estates they represent and to receive in payment of debts due them as such, or due the estates they represent,

the Treasury notes of said Confederate States; the Bonds of the same and the coupons due on said Bonds."

By the act 23 November, 1863, (pamphlet acts, 1863, p. 64,) when under a decree of sale, the "executor, &c., making the sale, has received the Treasury notes of the State or Confederate States, the party so receiving shall be exempt from any personal liabilities for so doing."

By the act 7 October, 1864, (pamphlet acts 1864, p. 14,) whenever any executor, &c., shall have deposited Treasury notes of the Confederate States, belonging to the estate of which he is executor, for the purpose of obtaining four per cent Bonds, under the act of Congress to reduce the currency, the certificate of deposit, or the Bonds when obtained, shall be distributable in the same way as the Treasury notes would be," &c., &c.

This was followed by legislation *subsequent* to the termination of the war.

By the proclamation of the President, 21 June, 1865, (13 Stat., 767,) the people of Alabama were authorized to assemble in Convention and form a State Constitution.

This Convention met in Montgomery, and adopted a State Constitution, on 12 September, 1865, which in all things was in harmony with the Constitution of the United States.

This Convention was recognized by the act of 2 March, 1867, (14 Stat., 429,) the 6th section of which provides, that until the people of "said Rebel States shall be admitted to representation in the Congress of the United States, any civil government, which may exist therein shall be *deemed provisional* only, and in all respects subject to the paramount authority of the United States.

By an ordinance, dated 21 September, 1865, this Convention ordained "that all laws enacted since the 11 January, 1861, (not in conflict with the Constitution of

the State or the United States,) "are hereby ratified and declared valid from their respective dates and shall remain in full force and effect until repealed."

This ordinance further provided, that in computing the bar of the statutes of limitation and non-claim, the time elapsing between the 11 January, 1861, and the passage of the ordinance shall not be estimated.

By another ordinance, dated 28 September, 1865— "all judgments, decrees, &c., and all acts and sales of executors, &c., and of judical and ministerial officers, had, done, and performed in pursuance of and under color of law, and in good faith, since the 11 January, 1861, not in conflict with the Constitution of the State or the United States, are ratified and confirmed."

The ordinance thus provides, that in all such judgments and decrees—the party against whom such judgment has been rendered, shall be entitled to a new trial, upon affidavit that he was unavoidably absent, and was unrepresented by attorney, and had a meritorious defence if such application for a new trial be made within twelve months from the date of the ordinance."

By the act of the legislature, 23 February, 1866, (pamphlet act, 1865,-6, p. 115,) it is declared that executors, &c., who have received Confederate Treasury notes, &c., in payment of property sold or in payments of debts, or may have bonded any of the assets of their respetive estates, in either Confederate or State Bonds, "shall not be held liable to account for the said funds or assets, either to creditors, distributes or legatees."

By act 21 February, 1866, (same pamphlet, p. 64,) it was provided "that from any decree or judgment of the Probate Court, rendered since the 11 January, 1861, and prior to 25 September, 1865, any person having an interest therein and aggrieved thereby, may appeal there-

from to the Circuit or Supreme Court, at any time within six months after the passage of this act."

By act of 21 February, 1867, (pamphlet act, 66, 67, p. 392,) from all judgments and decrees rendered between 11 January, 1861, and 20 July, 1866, a new trial was allowed, if applied for within "one year from the approval of the act."

By act 18 February, 1867, (same, p. 568,) the time was enlarged so as to include judgments prior to 1 January, 1867, and a new trial allowed if applied for within one year from the approval of the act.

By this recital it is seen that full remedies were afforded to all parties aggrieved by judgments or decrees rendered *during the war* by way of NEW TRIAL or APPEAL.

By the law of the State passed *prior* to the war, it was provided that "where any error of law or of fact had occurred in the settlement with an executor in the decree of the Probate Court without the fault or neglect of the party complaining, he was allowed to file his *bill in chancery*, to correct the same provided this be done within *two years from the date of the decree*, (code of 1852, § 1915. Code of 1867, § 2274. Ansley v. King, 35 Ala., 278.)

Here the party has not availed himself of the remedies provided by the legislature, on judgments and decrees rendered during the war, by applying for a *new trial*, or an *appeal*, but has resorted to a bill in chancery as provided in the code of 1852.

This bill is filed on 15 November, 1867, and seeks to open a decree of 2 May, 1864, after the lapse of near four years. Allowing the deduction of time up to the date of the ordinance 21 September, 1865, then the limitation for filing the bill under that ordinance, expired on 21 September, 1867, about two months before the proceeding was commenced.

The doctrine established in Hanger v. Abbot, that war constituted an exception in the statute of limitations, and that its duration is to be deducted from the time prescribed, and the decision in the Protector (13 Wall., 702) that for this purpose the war is to be considered as having terminated in Alabama, on the 2d April, 1866, have no application to a case in which all the parties were living under the same government, and for whom the courts were always open.

While this is the legal rule, a wise and liberal spirit induced the Convention of 1865, to recognize as a practical fact that the circumstances of war frequently prevented that attention to judicial proceedings necessary to a safe administration of justice, and hence the legislation which afforded a new trial and appeal from all judgments rendered during its existence. In the same spirit of liberality it was also provided, that in computing the bar of the statute of limitations, the time elapsing between the 11 January, 1861, and the 21 Septemper, 1865, should not be estimated.

The complainant then had the right to a new trial, or to an appeal, or to a bill in chancery, and if he has not availed himself of the remedies thus afforded, within the time prescribed, his claim is forever barred in all courts.

In the most recent decision of the Supreme Court of the State, as to the finality of decrees of the Probate Court rendered during the war, Peck, C. J., says: "The judgment of the Probate Court is not only a final judgment, but was carried into effect immediately after it was rendered. It must be held, therefore, to protect the appellees until it is impeached for fraud, or avoided by some legal proceeding for that purpose. It cannot be declared void by the Probate Court at the instance of the

appellant, upon the ground that it was rendered by a Probate Court of the Rebel Government."

"If the petition had been filed in time, and formed under the ordinance of 19 November, 1867, No. 48, the decree of final settlement might have been examined and reviewed in the Probate Court. The petition is not framed under that ordinance, and if it were, the ordinance had expired by its own limitation some months before the petition was filed."

"The ordinance shows that the Convention did not consider the judgments, sales and settlements referred to, void, but, on the contrary, provided *how they might be re-examined and reviewed.*" Griffin v. Ryland, June term, 1871.

Beyond controversy, therefore, the decree in this case was conclusive on the parties in the courts of the State.

We need not advert to the doctrine that where the statute does not, in express terms, include a Court of Equity, still, that court "acts in obedience to the limitation from which it is no more exempt than courts of law." (Bk. U. S. v. Daniel, 12 Pet., 56.) Here the act under which alone the bill could be maintained, refers expressly to courts of equity.

As the limitation provided is imperative on the courts of the State, it follows that it must be equally obligatory on those of the United States in the exercise of a like jurisdiction in the same State.

As between private suitors, Congress has passed no law regulating the time for bringing suits in the courts of the United States.

By the judiciary act the laws of the State are made the rule of decision in the trial of common law cases.

In the trial of equity cases the Federal tribunal,

having no legislative power to determine for itself a proper limitation, is necessarily governed by the rule at law. Cholmondley v. Clinton, 2 Jack & Walk., ch. R. p.

"The relation of the courts of the United States to a State, is the same as that of its own tribunals. Without this, the peculiar organization of the judicial tribunals of the States, and the Union, would be productive of the greatest mischief and confusion."

Beauregard v. City N. O., 18 How., 502.

If we were to admit that the bill was filed in time, we should still insist on the reversal of the decree in holding the executor liable by reason of his funding the Confederate money.

It is said that this was an act in aid of the rebellion which "the dignity of the United States Government' will not allow "to stand good."

It will be observed that this is not a case where a party is asking the aid of the court to enforce a contract or to enforce a right arising under a law. In such cases the court refuses its aid where the consideration is illegal. It leaves the parties plaintiff and defendant to adjust the controversy among themselves.

The case now presented is an appeal to the court to relieve one of the parties to a consummated act to set aside a judgment rendered under a government exercising full dominion over all the parties to it, and with their assumed assent. In such a case it does not lie in the mouth of a complainant to say that the Court of Probate could not exercise judicial power during the war, nor that these proceedings are erroneous in carrying into effect the laws of the Confederate Government, because made to facilitate the war against the Government

of the United States. He is as responsible and as much bound as if the record had shown he was himself the author of the law of which he now complains. As between citizens thus situated, all consummated acts are beyond the reach of judicial revision.

If the statute under which the executor was required to fund the assets of the estate was illegal, he was a party to it. In law he must be considered as having assented to it, and in such a case the court will not lend its aid.

This law of the Confederate Government was passed on the 15 February, 1864. It required Confederate notes to be funded by a certain time, on failure to do so they were no longer to be receivable for public dues; they were also to be taxed 33⅓ per cent., and in addition thereto 10 per cent. a month. (Record 78.)

If the executor under this law had failed to fund, and allowed the notes to perish on his hands, the complainant in the courts of the Confederacy would have had a perfectly clear case for condemning him. Can he now come into the courts of the United States and hold the executor liable on the opposite ground?

These principles here advanced have been fully sustained by the highest court in Alabama, Mississippi and Virginia.

Wilson and wife v. Stone, 40 Ala., 451.

Trotter v. Trotter, 40 Miss., 710.

The conduct of a trustee or agent must not be judged of by matters *ex post facto*.

In a case before the Supreme Court of Virginia, where an agent whose principal resided in a foreign country had, under an authority to sell, disposed of his estates for Confederate money which he subsequently funded in Bonds, the court said, "when we sit in judgment upon the conduct of agents, during a period of such remarka-

ble events as were then transpiring, it would be to the last degree unjust and inequitable to measure their conduct by subsequent events; to characterize as acts of folly those things which, in the light of the present may so appear because of the unfortunate result, and to condemn as criminally injudicious and reckless, conduct which, if events had been different, would have been wise and judicious. In the light of the present it is easy to discourse wisely of the folly and infatuation of those times in which men recklessly imperilled their own fortunes, and the fortunes of others under their control, in instruments which depended upon the result of battles and fate of war. But the folly and infatuation was common to the whole people, and men, as wise and judicious as any of the present day, embarked their all, and lost their all, by their confidence in a struggle which they felt sure must ultimately triumph.

To pass judgment rightly now upon their conduct, we must place ourselves in their position, and look out upon all the circumstances then surrounding them, not from our stand point, but from the stand point from which they received them, and judge accordingly."

The rule as to the liability of agents and trustees is fully discussed in this case after an elaborate review of English and American cases, and the conclusion reached that to make a trustee liable to make up a deficiency, not owing to his wilful default, is the harshest demand that can be made in a Court of Equity.

Myers v. Zetelle, 21 Grat., 751.

Independent of these considerations we ask, if the funding by the executor can, in any just sense, be considered as an act "in aid of the rebellion?"

It is not pretended that the funding was made with such intention, but, whether with or without intent, was

it such an act? By funding the notes, the debt of the Confederacy was neither augmented nor diminished; its form was only changed. By failing to fund, the debt was diminished by so much currency made valueless—without any increase in the bonded debt. It is therefore evident, that, with the alternative before him, to fund or not to fund, the executor acted in the mode least beneficial to the finances of the confederacy, and for so acting, the decree holds him liable as "aiding the rebellion."

Admit, however, that this funding was illegal, and that consequently the executor is liable as for a conversion, this would not charge him with the amount of the funds converted in specie or its equivalent. It is admitted that he had properly received Confederate Treasury notes. If he wrongfully converted them, the measure of liability is their value at the time of conversion.

Head v. Talley Admr., 3 Am. Law Times, No. 9, p. 55.

The matter on which the decree is based, is thus stated by the judge.

"The real estate had been sold to Craighead, on 8 January, 1859, on a credit of twelve months, for $10,400, of which $6,240, had been paid in good money, and included in the partial settlement of May, 1860. But there was still a balance due of $4,160, besides interest. Craighead died in June, 1859. His wife out took letters of administration. By the laws of Alabama an administrator cannot be sued until six months after the grant of the letters, and judgment cannot be rendered until the expiration of eighteen months. The whole sum became due in January, 1860, and suit could have been immediately brought, and judgment obtained by the month of January, 1861. But the executor did not bring suit,

and did not collect the balance until October, 1862, when he was obliged to take Confederate money, worth only thirty six cents on the dollar."

The record is silent as to when letters of administration were taken out, and there is a discrepancy between the deposition of Horn, and the statement in his answer, as to Craighed's death. In the former, it is stated to have occured in June, 1859, and in the latter, "not long after the purchase money became due," (to wit, January, 1860.)

If we take the latter date, and assume that administration was *immediately taken out*, the eighteen months would expire in July, 1861. If we take the date of June, 1859, and make the same assumption, then the eighteen months would terminate January, 1861. But when an admistrator stands a suit the money is not paid when judgment is rendered, but only on an execution, and if judgment had been obtained in January, 1861, the usual course of judicial proceedings would only have brought the money into Court six months thereafter, to wit, July, 1861. But secession had taken place on 11 January, 1861, and the war was flagrant in April.

The liability is imposed, because, as is stated in the opinion, "He has not shown sufficient excuse for not collecting the funds of the estate before the war commenced. Had he shown such excuse, says the judge, "I should have felt bound to charge him only with the value of the funds at the time, he received them."

Now whether he could have obtained the money by suit prior to secession depends on the date of Mrs. C's administration, as to which there *is no evidence.*

As to whether he could have collected the money without suit there is the same *absence of evidence.*

The decree is based on the *negligence* of the executor,

not only without any *evidence*, but without any *allegation* in the bill tendering such an issue. Without averment, without evidence of negligence, the decree is rested, on the ground that, in examining the record, "*it does not appear that he could not have collected the money by the exercise of proper diligence without suit.*"

This, we submit, reverses the rules of evidence. If the bill had charged the negligence, the *onus probandi* would have been with the complainant. Is his condition made better by the omission to make the averment? If, under the bill as framed, evidence of negligence had been offered, it would have been rejected, because no basis for it was to be found in the pleadings.

We, therefore, submit that the decree should be reversed on the following propositions maintained in the first brief, and in this.

First. That the case *as submitted for a decree*, including McPhail and wife as defendants, who, with complainants, were citizens of the same State, shows the court was without jurisdiction.

Second. That McPhail and wife were necessary parties to the bill as made by the complainant, and that when the court, on its own motion, dismissed them, no decree could be rendered.

Third. The Probate Court had complete jurisdiction of the parties, and the subject-matter, and its decree of 1864 was final and conclusive of all matters in issue, or which should have properly been put in issue, by the complainants, until reversed by some proceeding under the laws of the State.

Fourth. That the law of the State allowed a bill in chancery to be filed in two years to correct any error of law or fact, and this limitation is as obligatory on the Federal as on the State Courts.

Fifth. Admitting the bill to have been filed in time, the defendant could not be held responsible to the complainants for the funding of the Confederate currency, as this was done under existing law of a government of which all the parties were citizens and assenting thereto.

Sixth. That the act of funding cannot be regarded as done in aid of the rebellion, for a refusal to fund, whereby the currency would have become valueless, would have been a greater "aid to the rebellion."

Seventh. The negligence in the collection of the Craighead note is not charged in the bill, and is unsustained by any evidence.

Eighth. The collection of this note in Confederate currency was sanctioned by existing law of inevitable necessity, and if the party could be charged as for a conversion in funding the same, then the decree should have been for the value of that currency at the time of the conversion.

P. PHILLIPS.

S. J. CUMMING,
of Counsel.

Supreme Court of the United States.

No. 17.

JOHN A. C. HORN

vs.

WILLIAM LOCKHART AND OTHERS.

BRIEF FOR APPELLEES.

I. That McPhail and wife were made defendants did not oust the jurisdiction of the circuit court.

They were not indispensable parties, and were to be served with process if they came within the jurisdiction of the court.

Rule 22, Equity Practice.
Jones *vs.* Andrews, 10 Wall., 327.
Browne *vs.* Strode, 5 Cranch, 303.
McNutt *vs.* Bland, 2 How., 10.
Wormley *vs.* Wormley, 8 Wheat., 421.
Irvine *vs.* Lowry, 14 Pet., 293.

II. But the dismissal of the bill as to McPhail and wife so as to cure any defect in the jurisdiction is warranted by the established practice of the court.

Conoley *vs* Taylor, 2 Peters, 556.
Dwight *vs.* Humphries, 3 McLean, 104.

After the bill was dismissed as to them, the complainant's,

right to relief was as perfect as before, as to all parts of the case on which the bill was sustained.

III. The bill was filed to enforce a trust growing out of an administration, and to have an account of the trust estate in the hands of John A. C. Horn. It is alleged in the bill that he claimed to hold this trust as executor, but that the will under which he set up his right was of no validity, and that the complainants still have the right to contest it; that if the probate stands, the complainants are entitled to relief as legatees; if it is set aside, they are entitled to relief as heirs at-law and distributees of John Horn. That the children of John Horn are the sole legatees under the will, the widow having dissented from the will, and that together they represent every interest in the estate, whether they claim as heirs or as legatees.

In either capacity the same estate belongs to them, the only difference being in the amount that each would receive. There is, therefore, no repugnance in the rights thus set up by the complainants.

All the children of John Horn are residuary legatees under his will, and one of the purposes of this suit is to increase this residuum.

The following cases establish the equity of the case:

Payne *vs.* Hook, 7 Wall., 425.
Same case, 14 Wall., 252.
Dement *vs.* Boggess, 13 Ala., 140.
Sellers *vs.* Sellers, 35 Ala., 235.
Gosuld *vs.* Hays, 19 Ala., 438.
Pharis *vs.* Leachman, 20 Ala., 652
Wilson *vs.* Cook, 17 Ala., 59.
Henley *vs.* Henley, 15 Ala., 91.

As a bill to recover a legacy, the equity is even more conclusive, as established in the following cases:

Leavens *vs.* Butler, 8 Port., 380.

Pearson *vs.* Darrington, 18, 348.
Huckabe *vs.* Swope, 20 Ala., 449.
Vaughn *vs.* Vaughn, 30 Ala., 329.

These cases show that whether or not the existence and amount of a legacy has been ascertained by the decree of any other court, equity has jurisdiction of a suit for its recovery; that its jurisdiction is original and inherent in the court, and is not affected because a similar jurisdiction is conferred on the probate courts.

IV. It is alleged in the bill that legacies are due the complainants under the will of John Horn, and reference is made, in anticipation of the defence, to a pretence set up by the defendant through which he claims that he is exonerated from the payment of these legacies, viz: that on May 2, 1864, he made a final settlement of his accounts as executor in the probate court of Marengo county.

The legal validity of this settlement is assailed in the bill on several grounds, upon facts appearing on the face of the proceeding:

1. It is insisted that said decree is void because it contains in its body a provision that the sum found to be due to the several legatees of John Horn shall be paid in Confederate bonds, instead of money, which is an act in direct support of the rebellion.

This part of the decree is attempted to be supported by an act of the Legislature of Alabama, approved November 9, 1861, which the supreme court of that State has declared unconstitutional.

Houston *vs.* Deloach, 43 Ala., 364.
Martin *vs.* Hewitt, 44 Ala., 418.
Powell *vs.* Boon, 43 Ala., 459.
City of Richmond *vs.* Smith, 15 Wall., 429.
Texas *vs.* White, 7 Wall., 700.
United States *vs.* Keehler, 9 Wall., 83.

A decree of confiscation by a rebel court would be very analogous in principle, and quite as valid as this decree.

2. It is insisted that the decree is open to attack, because it was rendered without actual notice to the complainants of the proceeding in the probate court.

The State laws allowing their courts to proceed to judgment against nonresident parties, were designed for times of domestic peace, when notice can be given with reasonable certainty to such persons, through the agency of newspapers and mails.

These statutes ought not to be allowed to apply in a time like that in 1864. Such decrees, rendered without actual notice, are always open to impeachment for any cause that would have been sufficient if presented duly when they were rendered.

Bigger *vs.* Hutchings, 2 Stew. Rep., (Ala.,) 445.
Foster *vs.* Glazener, 27 Ala., 391.
Hunt and Coudry *vs.* Mayfield, 2 Stew. Rep., 124.

Such decrees rendered at a time when citizens are denied access to the State where the proceeding is being had ought not to stand against the person who had no actual notice.

3. It is insisted that the decree was obtained fraudulently by Horn, and that the facts showing the fraud appear on the face of the record, as well as in the testimony. That Horn failed to disclose *in his accounts* filed in the court, or in any previous report, that he had invested any of the money of the estate in Confederate bonds. By such means he misled those interested in the estate, and for the first time claimed to have made such investment at the moment the final decree was made. That he misrepresented to the court the amount he had so invested, by covering a much larger sum than he had so invested. That he attempted to account with the probate court for legacies which he held under a trust that was not executorial.

Perkins *vs.* Lewis, 41 Ala., 649.
Anderson *vs.* McGowan, 42 Ala., 280.
Hays *vs.* Cockerell, 41 Ala., 75.

4. It is insisted that the act of the Legislature of Alabama of 6th November, 1861, has no application to the investment of legacies in Confederate bonds.

5. It is insisted that the effect of the decree, even if valid, and free from apparent error, was not to discharge the executor. That the trust still subsisted until it was satisfied by the payment of the legacies.

Simmons *vs.* Price, 18 Ala., 405.
Norman *vs.* Norman, 3 Ala., 389.
Throsh *vs.* Sumwal, 5 Ala., 15.
5 Stew. & Port., 181.

6. It is insisted that the whole effect of the proceeding and decree in the probate court is to fix upon John A. C. Horn a money liability that could not be discharged, by an investment of the sum due by him to the legatees of John Horn in Confederate bonds, and that, because the decree is void, as to that part of it, equity is the proper forum in which to compel its payment.

Kyle *vs.* Mays, 22 Ala. Rep., 673.
Hughes *vs.* Mitchell, 19 Ala , 268.
Allen *vs.* Raney, 19 Ala., 68.
Duval *vs.* Chaudron, 10 Ala., 391.
Cogburn *vs.* McQueen, 46 Ala., 557.
Kavanaugh *vs.* Thompson, 16 Ala., 817.
Gilbreath *vs.* Manning, 24 Ala., 418.

V. No execution could issue on the decree of the probate court of Marengo. The decree is made payable in Confederate bonds, and would not support an execution for money. And no court in Alabama would issue or enforce an execution on a judgment rendered during the war.

Noble & Brother *vs.* Cullum, 44 Ala., 554.
Martin *vs.* Hewitt, 44 Ala., 418.
Bibb & Falkner *vs.* Avery, 45 Ala., 691.
Powell *vs.* Boon & Booth, 43 Ala., 459.
Houston *vs.* Deloach, *supra.*

The complainants were compelled to sue in some court to enforce their rights, even under the decree of the probate court, and they are in the proper court—in the only court that can render them a complete remedy.

VI. This trust is not executorial—

Perkins *vs.* Lewis, 41 Ala., 649,
Anderson *vs.* McGowan, 42 Ala., 280;

but if executorial, the money is due to the complainants as legatees, and the executor cannot require them to accept payment in anything but good money.

Powell *vs.* Knighton, 43 Ala., 626.
Aicardi *vs.* Robbins, 41 Ala., 541.

VII. The circuit court did not err in charging Horn with the Craighead debt. Horn presented the special issue as to his liability for this debt in his answer, in reply to general allegations in the bill charging him with a conversion of the funds, and the non-payment of the sums found to be due by the probate court of Marengo. His account as rendered to the probate court disclosed his liability for all the assets of the estate, and all the legacies in good money. The decree rendered on that account, however, disclosed that he had invested "all the moneys of said estate in four per cent. bonds." To explain how such a decree could reasonably or fairly be rendered on such an account, he sets up in his answer that he took Confederate money from Craighead, and in his deposition, that he also took Confederate money from his attorney, Mr. Modawell, collected for the estate, and he cites acts of the Confederate Congress, and of the State Legislature to justify his course of administration.

These citations fail him utterly:

1. Because the money in his hands, as special legacies, was raised by the sale of real estate, and he could have retained the title to the property, and ought to have done so until good money was paid. It does not appear from his answers or proofs that he conveyed the lands to Craighead when he took the Confederate money for his debt.

2. Because no act of the Alabama Legislature passed during the rebellion authorized the funding or investment of legacies in Confederate bonds, or their collection in Confederate money.

3. After he had collected the note of Craighead he used it for more than a year, and other funds of the estate for more than two years, in his own private business, before he made the investment in Confederate bonds. He had converted the money and then took shelter from this act under these war laws.

4. When he voluntarily quit the line of his duty by using the funds of the estate in his own private business, the law ceased to protect him against losses which resulted from his delinquencies.

Steel *vs.* Knox, 10 Ala. Rep., 608.
Cogburn *vs.* McQueen, 46 Ala., 551.
Gerald *vs.* Bunkley, 17 Ala., 170.
Walls *vs.* Grigsby, 42 Ala., 473.
Betts *vs.* Blackwell, 2 Stew. and Port., 373.
Dean *vs.* Rathbone, 15 Ala., 328.

5. Horn could he have enforced his vendors' lien as to which the satute of non-claims, and the statute (of Ala.) prohibiting judgments for money against an administrator for eighteen months do not apply.

Lock's executor *vs.* Palmer, 26 Ala., 312.
Inge *vs.* Boardman, 2 Ala., 331.
Duval's heirs *vs.* McLoskey, 1 Ala., 708.

6. Horn was neither acting in good faith, nor under compulsion, in collecting the Craighead debt in Confederate money, nor in putting it into Confederate bonds, if he ever did so.

According to his answer and deposition, (which are in utter conflict,) he used the money of the estate until it was depreciated very greatly before he invested it; he invested a much smaller sum than came to his hands, in Confederate bonds, and he must have received his share of the residuum of the estate—his commissions and allowances his attorney's fees and expenditures, and a sum even beyond these, in good money, which he retained.

The proceedings of the convention of 1865 are declared void by the Supreme Court of Alabama in *Scruggs* vs. *The Mayor of Huntsville*, 45 *Ala.*, 220. That court has swept down the constitution and every ordinance of the convention as being enacted by an unauthorized body.

The bill is not filed to correct an error in the decree of the probate court under § 2274 of Revised Code. The bill is for a settlement of the estate, and the collection of a legacy which the decree shows to be unpaid. It is an appeal to the original jurisdiction of the chancery court to settle an estate and to execute a trust.

The decision in Bryan and Wife *vs.* Horn, 42 Ala , 496, fully sustains the proposition that the court of probate has no longer any jurisdiction of the proceeding, and that the remedy is in chancery. It by no means decides that the complainants have no remedy to recover the legacies due them under the will of John Horn.

For a discussion of these and other points, we respectfully refer the court to our former briefs in this cause.

JOHN T. MORGAN,
Attorney for Appellees.

Supreme Court of the United States,

No. 143.

JOHN A. C. HORN,

vs.

WILLIAM LOCKHART, ET ALS.

1. The original bill is exhibited against William McPhail, and Mary McPhail—citizens of Texas, in which State the complaintants reside, but the prayer for process is against those defendants, and that they "be made parties defendant to this bill, if they come within the jurisdiction of this court," under the rules of practice in such cases."

The second part of the 22nd rule of equity practice allows the introduction of such a prayer in a bill. The court would not permit the parties to be made, however, if their introduction into the record would oust the jurisdiction. In this case they appeared without process having issued against them, and answered without objection. Such voluntary appearance cannot oust the jurisdiction which was perfect in their absence. At most such an appearance, would only present to the Court an irregularity in practice, which it would require to be corrected by an amendment excluding them as improper parties.

In this case McPhail and wife were not necessary parties—in any aspect of the case, and certainly not in that phase in which the court granted relief to the complainants. The decree was for certain ascertained sums, being the amounts which were adjudged to be due them by a decree of the Probate court of Marengo county, rendered May 2, 1864, with interest from said date. McPhail & wife had no interest in those sums of money. Other sums were due them by the same decree, rendered by the Probate court, which the Circuit court gave them leave to apply for, in such form as they might be advised, on the principles of its decree.

Neither the rights of Horn or McPhail and wife, were affected by the fact that the latter were not parties to the record, but were stricken out by leave of the court. On the 25th, May, 1871, (record p. 93) motion was made by the defendant to dismiss the cause for want of jurisdiction, on the ground that the complainant, and two of the defendants were residents of Texas. On the 26th, May, this motion was submitted. On the 27th, May, the cause was ordered to proceed to hearing and the decission on the motion to dismiss was reserved, (record pp. 93, 4, & 5,). On the 22nd, June, the cause was heard, and by leave of the court the bill was dismissed as to McPhail & wife. The complaintants struck out the objectionable parties as soon as they could after the motion to dismiss was decided. The court had as much power to order, or to allow, the amendment of the bill then, as it had at any previous stage of the proceedings. Rule 52 of Equity practice gives the court discretionary powers, even where the objection was taken in the answer and the complaintants proceeded without regard to it.

The bill in this case was filed to bring to final settlement the estate of John Horn.

The equity of the bill is sustained by the decission of the Supreme court in *Payne vs. Hook*, 7. *Wall.* 425.

and other cases there cited. Same case, 14 Wall, 252.

The Chancery courts in Alabama have original jurisdiction of the settlement of the estates of decedents, which the jurisdiction of the Probate courts does not divest.

Dement vs. Boggess 13 Ala. 140.
Sellers vs. Sellers, 35, Ala. 235.
Gould vs. Hays, 19, Ala. 438.
Pharis vs Leachman, 20, Ala. 652.
Wilson vs. Cook, 17, Ala. 59.
Henley vs. Henley, 15, Ala. 91.

and many other cases cited in the above.

The case of Dement vs. Boggess, 13, Ala 140, is very similar to this.

The complaintants claim as heirs at law and distributees of John Horn, unless the will, a copy of which was admitted to probate in November, 1858, is declared to be valid, in which event they claim as legatees and devisees under the will. In either capacity they represent the entire estate, the heirs and legatees and devisees being the same persons, and the widow having dissented from the will.

The copy of the bill found in the transcript of the the record, is singularly incorrect, but enough of it remains to show the character of the proceeding and the substance of the allegations.

In Section 7, of the ~~bill,~~ it is stated that the defendent Horn, took into his possession, all the property real and personal of John Horn, and proceeded to collect moneys due said estate, and to sell the perishable property of said estate, and two hundred and forty acres of land described in the will. And, that from these several sources he derived thirty thousand dollars, for which, with the interest thereon, he is liable to account with the persons who are the heirs-at-law of John Horn, or if said will is established, he is liable to

account with said persons as legatees and devisees under said will.

Other allegations follow, stating his liability to account for rents of land, and hires of negroes.

The bill contains the further statement (record, p. 3,) that, in May, 1864, John A. C. Horn, proceeded in the Probate Court of Marengo county, to make a pretended final settlement of said estate, and filed his resignation as executor, but that it does not appear, from the proceedings, in said Court, that his resignation was accepted, nor that he was discharged from his trust, or released from the obligations and duties imposed upon him by law. It is further stated as follows: "It does not appear from said settlement, that John A. C. Horn had ever fully complied with his duties and obligations as as executor, in this :—that he had not paid to the persons entitled to the moneys in his hands, the sums decreed to them respectively by said Court. * * * * And it further appears, that said several sums of money decreed on said supposed final settlement, to each of the heirs and supposed legatees of the said estate, and to Mrs. Rebecca Horn, were decreed to be paid to them in the bonds of the Confederate States, and no such bonds were paid or received by any of them under such decrees." Then follows allegations of the illegality of such decrees, and a denial that the complainants had any notice of the settlement made in the Probate Court, or that they participated in the proceeding. Then follows the allegation that the complainants "have the same right to call said John A. C. Horn, to a full and final settlement of his dealings and transactions with the estate and property of John Horn, deceased, as if said pretended settlement had never been made.

Exhibits are attached to the bill embodying said decree.

In Section 11, of the bill, (record, p. 4,) the account of John A. C. Horn, rendered on the supposed final set-

tlement, is surcharged and falsified by the allegation that the moneys received by John A. C. Horn, for the estate were claimed by him to have been invested in Confederate Bonds, and it charges that if said funds were so invested by John A. C. Horn, such investment was made without authority of law, and was a conversion of said money, for which he is liable with interest.

In reply to these general allegations, the defendant John A. C. Horn, exhibits fully his accounts rendered to the Probate Court, which show a balance against him in cash, viz :

On account of personal property,.....	$2,318 86
On account of Real Estate,.....	4,933 04
	$7,251 90

To escape the payment of this sum in good money, and to support and justify the assertion in the decree rendered on the 2d May, 1864, that the executor "has invested the moneys of said estate in four per cent. Confederate Bonds," John A. C. Horn found it necessary in his answer, to assert what did not appear in the records of the Probate Court, that in October, 1862, he received from Craighead's administrator $5,075 26, for the lands he had sold his intestate on the 8th January, 1859. It was in this way that the special issue of Horn's liability for the Craighead debt came into the case.

Prior to the rendition of that decree, the record of the Probate Court contained no evidence that any investment of the funds of the estate in the bonds of the Confederate States had been made, and Horn found it necessary to supply by his answer, what had been so omitted in the records.

The Circuit Court found from the records of the Probate Court, exhibited with Horn's answer, that he had

charged himself in his accounts, after all credits were allowed him, with the sum of $7,251 90, which had not been paid to the persons entitled to it. The Court, without more, would have decreed the proper share of this fund, to the complainants, even if they were only distributes instead of legatees, but it considered the question raised on Horn's answer, (but not on the records of the Probate Court, whether if Horn received $5,075 26, of this sum from Craighead) in Confederate money, he should be released from paying it in good money. Thus the Circuit Court decided an issue presented in the pleadings. The bill charged that all the assets of this estate were collected and received by Horn in good money, that the land was sold for good money, and that he claimed to have invested it in Confederate bonds. The answer denies that "*all the assets*" were collected in good money, and sets up that part of them were collected in bad money and then invested in worse. As to the other part of the assets, the allegations of the bill is confessed by the silence of the answer.

The Circuit Court properly regarded the decree of the Probate Court rendered on the accounts of the executor, and at his instance, as settling the balance there ascertained against him, but as invalid to the extent that it required the legatees of John Horn to accept Confederate Bonds in lieu of the money due them.

Kavanaugh vs. Thompson, 16 *Ala.*, 817.

The Circuit Court gave to the decree of the Probate Court, the utmost effect that can be claimed for it, and yielded to Horn all the protection it could afford him without sustaining a direct and palpable violation of the laws of the United States.

The decree had never been executed, or carried into effect. No payment or offer to pay in Confederate Bonds, was ever made by Horn. This fact is alleged in the bill and is not denied in the answer.

In this respect, the case differs from Griffin vs. Ryland, decided by the Supreme Court of Alabama, at its June Term, 1871, 45 Ala., 688. There the decree of the Court was fully satisfied in the presence of the Court, and the executors paid over the balance due, and turned over all the assets to the guardian of the infants and were decreed to be discharged. It does not appear that Confederate money was used in paying the balance found due.

In Ellis vs. Smith, 42 Ala., 349. The Court (elected during the war,) held that a decree of the Probate Court could not be satisfied by a payment into the Court of Confederate money. And in Thompson vs. Perryman, 45, Ala., 619, the present Court held that a decree rendered in 1860, against an administrator could not be satisfied by a payment in Confederate money to his successor in 1863. For a better reason, a Probate Court could not render a decree for money, and require that it should be paid in Confederate Bonds; especially to a legatee.

In Hill, Adm'r, vs. Erwin, 44 Ala., 661. The Supreme Court holds that the term "dollars" in a note given for a purchase of lands at a sale under the order of a court, means good money—legal tender, and can not be proven to mean Confederate money, according to the real intent of the parties to the sale.

In several cases the Supreme Court of Alabama has held that executions issued on judgments rendered during the war have no lien, and are invalid.

Martin vs. Hewit, 44 Ala., 418.
Noble & Bro. vs. Cullom & Co., 44 Ala. 554.

In all the cases decided since the January Term, 1869 hy the Supreme Court of Alabama, where the question has arisen, judgments rendered during the war have been treated as foreign judgments, and held only to furnish a cause of action.

In Bibb & Falkner vs. Avery, 45 Ala. 691, it is held that Executors, in virtue of letters testamentary taken out during the war, could not sue for and recover the assets of the estate.

Treating the decree of the Probate court of Marengo county as the judgment of a foreign court, and assuming that it is not paid, the complaintants, had no adequate remedy for its collection, unless by bill in equity.

The money due on this decree is a trust fund, and its character is not altered by the fact that the amount is ascertained. It is a legacy to the complaintants in the hands of the executor that remains ununpaid, The state authorities of Alabama, now in power would give no execution on the decree, nor enforce its execution whether treated as a money decree, or as payable in Confederate bonds, because the courts there decide that it is no more than a foreign judgmeut. Equity courts, therefore can alone give the complaintants relief.

An executor, under the laws of Alabama, who has made a final settlement, and has resigned his office, is not discharged until he has paid all decrees against him. The trust sill subsists in his hands.

Cogburn vs. McQueen, 46 Ala. 557.

In equity the sureties on an executor's bond may be sued along with him, before any final decree is rendered against the executor. It is otherwise at law. The surety being liable only for waste of assets, or some default of the executor cannot be sued at law by a legatee, until he has first obtained a decree for his legacy. There is an element of trust in the case.

Oelrick's vs. Spain, 15 Wall. 215.

No remedy by appeal, exists as to the decree of the Probate court of Marengo. The Supreme court of Alabama must refuse jurisdiction of an appeal from a judg-

ment which it treats only as the judgment of a foreign court.

The decree which they have, contains a provision which destroys its value and defeats its only legal purpose and effect. To enforce it completely, the courts must violate the law.

But the decree, as rendered, is null as to that part which authorizes payment in Confederate bonds.

The executor attempts to support it by the provisions of an act of the Legislature, approved November 6,1861.

The Supreme court of Alabama has declared that act unconstitutional.

Houston vs. Deloach 43, Ala. 364.
Martin vs. Hewitt, supra.
Powell vs. Boon 43, Ala. 459.
City of Richmond vs. Smith, 15 Wall. 429.

The reasons given by the court for declaring this act unconstitutional are the same that appear in the body of the decree rendered by the Probate court of Marengo,—the direct tendency and purpose of the law to aid the rebellion.

The acts of November 23d, 1863, and February 23d, 1863, cited in Exhibit C, to the answer of Horn, are more palbably unconstitutional than the act of November 9, 1861. They impliedly include the obligations of contracts and commit them to merciless slaughter, and by retroactive operation destroy vested rights. They breath both war and destruction. The remaining acts of the Legislature cited by him in the exhibits to his answer were passed after the decree had been rendered by the Probate Court of Marengo.

These statutes give no support to this decree, they rather add cogency to the objection that the decree based on them is in itself an act of rebellion. They have no application to legacies and were never intended to enable executors to pay money legacies in Con-

federate money. These statutes, in their boldest operations, did not expressly involve contracts or vested rights, both of which were protected by the Confederate constitution and that of the state. They were carefully framed so as not to include legacies.

The conduct of Horn, in the management and settlement of this estate, shows that he acted fraudulently in procuring the decree, and did not make the Confederate investment in good faith.

1. In his account rendered to the Probate court he claims nothing as having been invested in Confederate bonds.

2. In the decree it is ascertained and declared that he invested all the assets of the estate in Confederate bonds.

3. In his account, Horn charges himself with "interest on $5,075,20, used by executor one year $406,01," and interest on $2000, for two years $320,00 used by the executor.

The dates at which he commenced to use this money are not given, but if he ever invested this sum of $7,801,20, in Confederate money, he must have first paid it back into the estate *after it was "used by the executor,"* part of it for one year, and part for two years.

On the credit side of his account he takes credit for $1,285,66, without date as follows: "J. A. C. Horn, cash loaned $1,385,66." So that he used and borrowed, or loaned out $7,360,86, which he attempts to discharge himself from, by getting a decree to pay it in Confederate bonds. *This is a larger sum than the assets of the estate left for distribution.*

He got the legacies due the complainants into his pockets, kept them there for one or two years, and then claims that the legatees shall lose them because he converted the same or part of the same into Confederate bonds.

In loaning and using this money the executor was acting out of the line of his duty, and can claim no protection from Confederate laws, or the necessity of the times.

Steel vs. Knox 10, Ala. 608.
Cogburn vs. McQueen, 46 Ala. 551.
Walls vs. Grigsby, 42 Ala. 473.
Gerald vs. Bunkley, 17 Ala. 170.
Betts vs. Blackwell, 2, Stew & Port, 373.

In Horn's answer (record p. 25, folio 80,) he only claims that he collected the balance of the Craighead debt in Confederate money, amounting to $5,075 20. In his deposition (record, p. 122,) he adds two other sums, viz: "I received from W. B. Modawell, as attorney, moneys he collected for the estate, $1,706 76, in the fall of 1862. I also received other amounts amounting to above one thousand dollars, in the year 1863. I did not invest it in Confederate bonds or certificates until. 16th of March, 1864." These sums amount to $7,781 96, and the receipt of the Depositary of the Confederate States shows that on the 16th March, 1864, he deposited $7,900, for which he got the four per cent. bonds of the Confederate States.

Thus we find a large discrepancy in the account-current, the answer, the deposition, the decree, and the receipt of the depositor, as to the amount of Confederate bonds in which Horn invested the money of the estate, each differing from the other.

If, as Horn states in his deposition, he had ever reported this pretended investment to the Probate Court before the day the final decree was made, that report would appear of record, or if lost or destroyed, the recollection of it would have enabled Horn to avoid such discrepancies as appear in his several statements.

The allowance of the fullest effect to the validity of Confederate laws would not shelter this administrator

in his mismanagement of this estate, nor protect him in withholding the money due the legatees, and in using all that was due them for his private advantage.

While this illegal dealing with their property was progressing, the value of Confederate money sank almost to nothing.

Horn, in his deposition, (p. 118, record,) says: "I received said sums of money about October. 1862. I bonded them because there was a law passed by the Confederate Congress compelling treasury notes to be bonded by such a time, or they would become worthless." The act of Congress to which he refers was approved February 17, 1864. Horn was controlled by an act of Congress of the Confederate States, having for its sole object the maintenance of the rebellion, and not by any act of the Legislature of Alabama. But he first withheld the money due these legatees until after this obnoxious law was passed. Had he paid them, this law might not have swept their estate from them. Having put himself in the wrong, he attempted to take shelter under this newly-discovered compulsory act of Congress.

Dean vs. Rathbone, 15 Ala. 328.

It is not the law in Alabama that Horn should wait either eighteen or twenty-four months to collect Craighead's note. It was due on the 8th of January, 1860, The notes were a vender's lien on the land, which could have been enforced in equity immediately they were due.

Duval's heirs vs. McLoskey, 1 Ala. 708.

Inge vs. Boardman, 2 Ala. 331.

Locke, Executor, vs. Palmer, 26 Ala. 312.

Not more than six months could in any event be claimed by the administrator of Craighead during which he would have been exempt from suit.

It does not appear that Horn ever made a deed to the land. He had no right to convey it until it was paid for, and he had a complete remedy by ejectment to recover it from Craighead rather than take illegal currency for it. Even now he can subject the land to payment of the purchase money, or recover it from Craighead's heirs if he chooses to do so.

In respect of the right of an executor to pay in Confederate money, a legacy charged on lands he is required by the will to sell, the case of Powell vs. Knighton, 43 Ala. 626, is an authority conclusive in this State.

The will of John Horn disposed of his entire estate. His children are made the residuary legatees. John A. C. Horn shared in the residuum of the estate, and contrived to retain his share, and his commissions as executor, his counsel fees, and discount on Confederate money, out of the good money in his hands, while he attempted to pay the special legacies to his sisters in Confederate bonds, after having retained the money and used it until Confederate money had depreciated to one-third of its nominal value.

He is liable to account in a court of equity both as legatee and executor; and the jurisdiction given to courts of law for the recovery of money legacies, does not oust or affect the original jurisdiction of equity to hold him to account.

Leavens vs. Butler, 8 Porter, 380.
Pearson vs. Darrington, 18 Ala., 348.
Huckabee vs. Swope, 20 Ala, 491.
Vaughn vs. Vaughn, 30 Ala., 329.

In the spring of 1864, the Mississippi river was completely in possession of the armies of the United States, and all Trans-Mississippi communication from

Alabama was at the risk of life or military arrest. Mail communications were stopped, and the people of Alabama were deprived of the power to sue non-residents and to perfect service on them through the newspapers and post-offices. This being the only legal notice required in respect of foreigners, to bind them by judicial proceedings in the settlement of estates, the war and the occupation of the Mississippi river by the United States army, furnished John A. C. Horn an excellent opportunity to have questions settled, in the absence of those adversely concerned. He took advantage of it, and concluded an *ex parte* disposition of the rights of those across the Mississippi in the most summary way.

The slightest unjust advantage taken by a trustee in such cases is always enough to open the case to a more satisfactory settlement. In this case, the trustee was not impartial, but was saving himself against a devastavit while he was getting a decree without actual notices, which gave to him large advantages as a legatee. The conduct of Horn in proceeding to a settlement at the time he did, and upon the account as presented by him, is fradulent. The complaintants deny that they were represented on the hearing of the case in the Probate court.

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